INTRICACY OF PLEA BARGAIN IN UGANDA CRIMINAL JUSTICE

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ABSTRACT

Through the aid of desk review, this study examines the extent to which plea bargain has facilitated in the promotion, protection and enforcement of justice in Uganda's criminal justice system. The study highlights how plea bargain have been a tool in the alleviation of case backlogs in Uganda, protection of the rights of accused persons, reduction of prison congestion alongside improvement of inmates' health condition, promotion of reconciliation rather than retribution and also put an end to unpredictable lengthy litigation.

In evaluation of the nature of plea bargain, amid the several benefits which plea bargain inputs in to Uganda's criminal justice system, statistics and studies have shown that plea bargain while addressing the shortcomings of the pre-existing procedure for criminal litigation, plea bargain has apposition new challenges which goes against both its core objectives and the principles of law which governs the administration of justice.

All things considered, while understanding the positive roles of plea bargain programs in Uganda and how it tends to create new challenges, it is kin to acknowledge how all this affects the accused individual(s), the aggrieved party, and the society at large.

DECLARATION

I affirm to the originality that this dissertation, except for materials and works properly cited and references, have never been submitted for any form of academic award in any institution.

STUDENT: DOGO STEPHANAS LESLIE

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DATE: .....

APPROVAL

This is an attestation that the submission of this dissertation as a partial fulfillment of the requirements for obtaining a Bachelor of Laws degree at Uganda Christian University have been critically evaluated and approved.

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DATE: 15th MAY 2025

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LIST OF ABBREVIATIONS

UNTOC	United Nations Convention Against Transnational Organized Crime
ICC	International Criminal Court
DPP	Director of Public Prosecutions
ICCPR	The International Covenant on Civil and Political Rights
CJS	Criminal Justice System
UN	United Nations
SGJI	Sudreau Global Justice Institute
MCA	Magistrate Court Act
PCA	Penal Code Act

LIST OF AUTHORITY

INTERNATIONAL INSTRUMENTS

1. International Covenant on Civil and Political Rights (ICCPR)
2. The International Criminal Court of Procedure and Evidence Rules
3. The African Charter on Human and Peoples' Rights
4. United Nations Convention Against Transnational Organized Crime (UNTOC)
5. Rome Statute of the International Criminal Court (ICC), 1998

DOMESTIC LAWS

1. The 1995 Constitution of the Republic of Uganda (As Amended)
2. The Judicature Act Cap 16
3. Penal Code Act Cap 128
4. The Judicature (Plea Bargain) Rules, 2016
5. The Trial Indictments Act Cap 25
6. The Magistrate Court Act Cap 19
7. Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013

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1. Cargill Zambia v Culvenhum Trading (Pvt) Ltd [2006] ZWHHC 42
2. Santo Bello V New York 404 U.S. 257 (1971)

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CHAPTER ONE: RESEARCH PROPOSAL

1.1 GENERAL INTRODUCTION

The Supreme Court of the United States in **Santobello v New York**[1] defined plea bargain as: "*The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes called ''plea bargaining" is an essential component to the administration of Justice*". From the era of Ur-Nammu to date, different countries deemed it right to have laws that are negated by rights and regulations upon which failure to comply with the rules set in place is an offense that is punishable by law.

Von Savigny in his school of thought advocates that as society evolves, so also should the laws governing a state. The bureaucracy of law has failed Uganda as a state in upholding the right to a fair and speedy hearing[2]. This has caused case backlogs as there is lack of resources and manpower in the adjudication of dispute resolution by courts. Currently, Uganda has thousands of inmates who have been in remand for months/years without taking a plea before a court.

Plea Bargain is a new concept introduced by Sudreau Global Justice Institute (hereinafter referred to as SGJI) in over 11 High Court Circuit[3] to help eradicate case backlogs in the criminal division. This program guarantees not only a speedy but a more effective approach as inmates who are not innocent are allowed to enter a plea of guilt without being in remand for long and, with a reduced sentence which has

[1] Santobello v New York 404 U.S 257 (1971) (Supreme Court, United States)

[2] Article 12 Constitution of the Republic of Uganda

[3] https://law.pepperdine.edu/global-justice/what-is-global-justice.htm. visited 20th December 2024

been negotiated between the accused and their counsel, the state prosecution and the judge presiding over the case; keeping in mind the interest of the aggrieved.

1.2 BACKGROUND OF THE STUDY

In the past decades, the law in its rigid nature could not rhyme to the need for a fair and speedy trial in Uganda. In this regard, a program called Plea Bargain was introduced in 2014. However, some advocates and Judges did not subscribe to the idea of embracing plea bargaining as it is a form of legal proceeding that flagged the current criminal proceedings as red-tapes, by by-cutting procedures which are mandatory to follow in criminal proceedings.

With factors such as the Covid-19 epidemic, Uganda as a state went through two lockdowns. Due to the pandemic, the judiciary became overwhelmed considering the lack of resources and manpower that were in place. In response to addressing pending cases, some of the courts found it effective to adopt plea bargain for those inmates who are willing to plead guilty to start serving their punishment but have not had a hearing yet.

Hon. Alfonse Chigamony in his 2023 address at the launching of the judiciary annual performance reported a total of 2,857 cases were completed at the High Court, while, 1,160 cases were completed through the regular day-to-day hearing of cases, and 1,697 successful cases through Plea Bargain Camps affiliated to different Magisterial Areas. All Summing up to an 88.12% success rate[4].

[4] Chief Justice Alfonse C. Owiny-Dollo (2023), Strengthening Administration of Justice

1.3 STATEMENT OF THE PROBLEM

Article 7(d) of the African Charter on Human and Peoples' Rights mandates the protection and enforcement of individuals right by member states of this charter on the right to a fair hearing within a reasonable period of time[5]. This principle was subsequently adopted in Article 28(1) of the Uganda constitution which enshrines the promotion and enforcement of a free, fair, and speedy trial before a competent and independent court in Uganda[6].

However, with the increasing rate of case backlogs in Uganda, this right gradually becomes more of a mirage as there are thousands if inmates spread across various prisons in Uganda who have been in remand for over two years (or more) without having a day in court. The Judicature (Plea Bargain) Rules 2016 was one of the mechanisms adopted by the Uganda Judiciary in 2014 to rectify the issues of case backlogs and the challenges it poses in the administration of a fair and speedy trial. The researcher intends to explore the spectrum of plea bargaining, uncovering how it curtails case backlogs in Uganda, how cases are being expedited using plea bargain programs in Uganda, and the challenges that plea bargaining poses in administering justice in the criminal justice system.

1.4 OBJECTIVES

1.4.1. GENERAL OBJECTIVES

- To evaluate the effect of plea bargain in Uganda Criminal Justice System.

[5] Article 7(b) African Charter on Human and Peoples' Rights

[6] Article 28(1) Constitution of the Republic of Uganda

1.4.2. SPECIFIC OBJECTIVES

- To understand the concept of plea bargain.
- To investigate the negative and positive impact plea bargain has in criminal litigation.
- To examine the challenges faced by parties in a plea bargain agreement in Uganda's Criminal Justice system.
- To recommend solutions on how plea bargain can be more effective in administering substantial justice.

1.5. RESEARCH QUESTIONS

- What is the importance of plea bargain in Uganda?
- To what extent has plea bargain impacted the criminal justice system in Uganda?
- What are the challenges faced by parties in a plea bargain agreement in Uganda's Criminal Justice System?
- How can plea bargain be more effective in promoting substantial justice?

1.6. SIGNIFICANCE OF THE STUDY

- This study is to critically assess the intricacy of plea bargain in the criminal justice system in Uganda.
- This study will supplement the existing knowledge on plea bargain and its effectiveness in Uganda's criminal justice system.

- The findings and recommendations of this study shall benefit various stakeholders like academicians, advocates, the Director of Public Prosecution (DPP), magistrates, and Judges.

1.7. JUSTIFICATION OF THE STUDY

Plea bargain is not a new field in Uganda as it has been in practice for more than a decade. Different authors have carried out research on the history, development and effect of plea bargain in both the international and domestic spectrum. This research uncovered the impact of plea bargain in Uganda's criminal justice system, examined extent that plea bargain improved the judiciary in Uganda, and the negativity of the plea bargain programs in Uganda's criminal litigation. This study also highlighted recommendations that can be taken into consideration in addressing the challenges affiliated with plea bargain in Uganda.

1.8. SCOPE OF THE STUDY

1.8.1. THEMATIC/SUBJECT SCOPE

This study discussed the intricacy of plea bargaining in Uganda, thereby highlighting how plea bargaining has positively impacted the criminal justice system and the various challenges that plea bargaining imposes in criminal litigation.

1.8.2 GEOGRAPHICAL SCOPE

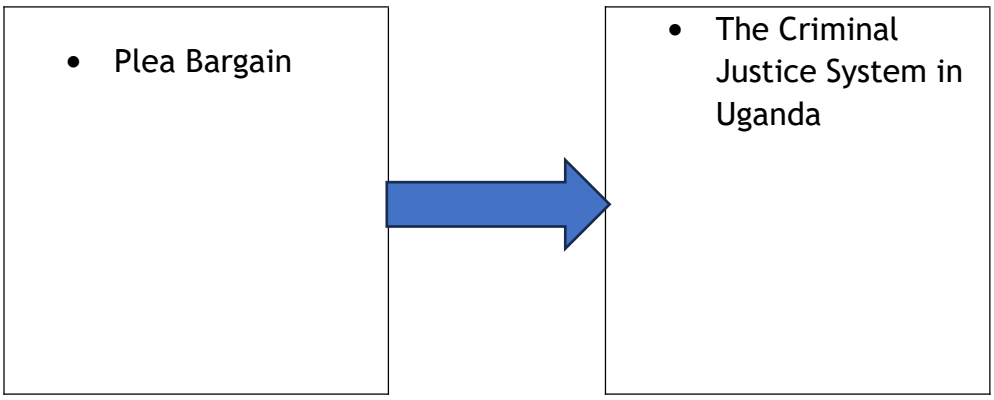
The research was carried out in Uganda, specifically in Mukono. Reason being that the researcher partook in a plea bargain project in the Chief Magistrate Court of Mukono and Kauga Prisons (which is also situated in Mukono).

1.8.3. TIME-BASED SCOPE

The study covered the timeline between May 2014 to March 2025. The year 2014 is important as it marks the year plea bargain was introduced and fully recognized by the Uganda Judiciary, thereby attaining legitimacy and practicality in Uganda.

1.9. THE CONCEPTUAL FRAMEWORK

Independent variable. **Dependent variable.**



1.10 LITERATURE REVIEW.

The chronicles of plea bargain is a question that is still up for debate. Different school of thoughts have different backgrounds as to historiography of plea bargain in America.

Albert Alschuler in his article 'Vanishing Civil Jury' stated that plea bargain was a gradual development of the earliest days of common law when an accused person could be convicted on the acknowledgment of the crime accused to have committed[7]. The rule in criminal litigation is that an accused person under the law is presumed innocent until proven guilty or when pled guilty[8]. Be that as it may, under common law the trial judge had the discretion to tamper justice with mercy as the accused person did not waste the court's time and resources which usually goes with the court being lenient on the convictions or punishment that the accused person would serve as against what he or she would have originally served if he or she loses in a court trial.

Malcom M. Feeley, a professor of law Emeritus at Berkeley Law[9], wrote an article 'Perspective on Plea Bargaining'[10] in which he addressed the question, how accurate must a fact-finding system be to justify acceptance? He stated that the processes accorded to criminal proceedings are elaborate mechanisms for ascertaining the truth and not instruments whose accuracy can be measured[11]. Most scholars believe that

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[7] Albert W Alschuler (1990) "The Foreword - Vanishing Civil Jury", vol 1990 University of Chicago Legal Forum pp 1-25

[8] Article 28(3)(a) of the Constitution of the Republic of Uganda

[9] Feeley Malcom M, Https://Www.Law.Berkeley.Edu/Our-Faculty/Faculty-Profiles/Malcolm-Feeley/#tab_profile. Accessed on 3th January 2025

[10] Malcolm M Feeley (1979) "Perspectives on Plea Bargaining", vol 13 Cambridge University Press, pp 199-209

[11] ibid.

plea bargaining is compulsive as it does not conform to the "natural" course of events in criminal proceedings. However, Feeley perceives that plea bargaining and the traditional criminal procedure are inseparably linked. That these two systems co-exist in such a way that when the conventional proceedings are ineffective, plea-bargaining fills that gap in ensuring that not only is justice served, but that it is served in due time.

Feeley further contends that plea bargain is an inevitable consequence of the modernization of the criminal justice system. He reasons that the critiques of the idea of recognizing plea bargaining into the criminal justice system often believe that the rise of plea bargain seeks structural interest over the interest of justice. However, in his research, he portrays that the reverse is the case as courts pass judgments based on the merits and circumstances surrounding the case, thereby giving the administration of justice a new perspective of tackling case backlogs and criminal matter.

It is also worth noting that Feeley tries to portray how the concept and operations might not be the problem but how dependent is the legal system on plea bargaining as a mechanism in criminal litigation. To exclusively focus on plea bargaining in criminal law can cause some anomalies that might cause unanticipated consequences which can have a lasting effect on the criminal justice system.

On the other hand, Moise Berger the author of the article 'The Case Against Plea Bargain'[12] acknowledges that plea bargain as a litigating mechanism is not entirely

[12] Moise Berger (1976) "The Case against Plea Bargaining", vol 62 American Bar Association, pp 621-624

objectable. Though the journal is against plea bargaining as a mechanism of court, he recognized that sometimes plea bargaining is a necessary evil. He gave instances where the case before the court is weak and clear-cut. Such cases need not go through the full court process as plea bargaining would be a better alternative in adjudicating such matters.

Berger further contends that those who defend plea bargain in criminal law either have an interest in seeing plea bargain as a practice continue i.e. incompetent lawyers. Or, they have a big misconception about the values and inevitability of plea bargaining. This creates a problem as it liberates prosecutors and judges from their moral obligations as judicial officers in upholding the ideal justice. Plea bargaining allows judges (in agreement with the state attorney and counsel for the defendant) to make lenient judgments on the accused, knowing fully well that such a pronouncement might not be morally upright when it comes to the principles of natural justice and equity.

Ultimately, Berger asserts that the reason why judicial officers and lawyers are always eager to opt for plea bargaining rather than going for a full-blown trial is the success rate it has in disposing cases as compared to following criminal proceedings.

In Uganda context, Justice Stephen Mubiru in 2011 wrote a paper "Plea Bargaining Within the Context of Transitional Justice: Exploring its Potential for Promoting Peace and Accountability in the Wake of International Crime in Uganda"[13]. He argued that considering the impact the war between the NRA government and The Lord Resistance

[13] Stephen Mubiru (2011) "Plea Bargaining Within the Context of Transitional Justice: Exploring Its Potential for Promoting Peace and Accountability in the Wake of International Crime in Uganda" Utrecht University Netherlands.

Army in Northern Uganda, and the budgetary funds allocated to the judiciary in adjudicating international crimes, the courts of Uganda are limited to prosecute both international and domestic crimes without compromising the principles of fairness and the right to justice. It is in view of this that Mubiru elucidated how plea bargain can play a vital role in matters relating to international crime. He showed how plea bargaining is the best litigating mechanism for former child soldiers. He contends that plea bargain gives a wider range of options in salvaging their conscience and atoning for their wrong doing, avoiding indignity, demoralized and having to undergo trauma and psychological torture in a trial[14]. However, as sentences are per-determined in plea bargain, the parliament should guide the court by enacting a sentencing guideline on how cases which fall under plea agreements should be dealt with.

Nakibuule Gladys Kisekka in her article "Plea Agreement as Unconstitutional Contract" highlighted interesting parameters of plea bargaining when it comes to criminal matters in Uganda[15]. She highlighted how plea bargain in Uganda have separated the law from morality. Law and morality are cardinals that negate how courts adjudicate matters in the courts of law. The law stipulates the state's guidelines on how an individual ought to behave in a given society. While morality looks into what the society perceives as right or wrong based on the values and beliefs that they share as a community.

[14] ibid.

[15] Gladys Kisekka Nakibuule (2024) "Plea Agreements as Unconscionable Contracts" vol 15 Beijing Law Review pp 2093-2133

With plea bargain, Gladys portrays the fact that though plea bargain facilitates in reducing case backlogs, the criminal justice system in Uganda have been stripped-off its morality as the courts focuses on how fast a case can be disposed-off regardless of how it might affect the victim, the likelihood that the accused being rehabilitated within the period of incarceration, and if the society has healed and is willing to accept the accused back to the society after the crimes that he/she have committed against the state.

Given this consideration, Gladys recognized that the process of plea bargaining is that which is rushed. She argues that though plea bargaining was established to dispose of cases to reduce backlogs, the courts of judicature need to consider the fact that plea agreements are sensitive matters which should not be resolved on the essence of time. For the fact that a person is willing to incarcerate him or herself by admitting to the charges brought against them, the court should be more humane as these accused persons have put their trust in a system that they believe to be just, adequate and fair.

In her research, she also realized that accused persons initially conflict with the agreement, but eventually ends up embracing it. This is what she called the Coercive trait. This is an undermined aspect of plea bargain which deters the purpose of plea bargaining. To be pragmatic, accused persons or inmates who have been given the opportunity to opt for plea bargain mostly enter such agreements in a heartbeat. Gladys elucidates that most times it is not because they are remorseful or willing to change but because of emotional and social factors. She highlighted the factors that influence the decisions of inmates and accused persons into entering a plea

agreement. This includes factors such as Leniency 18.3%, dealing away with the charges 10.2%, quick disposal of the case 2.69%, relief from stress and anxiety 3.23%, certainty of ending trial 7%, social responsibility towards the family 8.06% amongst others. Thus, showing that plea bargain might not be effect as it seems to be[16].

Plea Bargain as discussed above is not as clear-cut as it seems. Many researchers and scholars have described what they perceive to be the nature of plea bargain based on their findings and how plea bargain affects not only the victim, accused and the courts of law but also the society at large. As the researcher carries out his thesis, he seeks to uncover how plea bargaining affects the criminal justice system of Uganda, how it impacts the society and whether plea bargain as an alternative mechanism for criminal litigation is a necessary evil.

[16] ibid.

1.11 RESEARCH METHODOLOGY.

1.11.1 Introduction.

This research gives the methods and tools the researcher used while carrying out this research. This chapter portrays the researcher's methodology for this study. It comprises of the model specification, data source, research design, data analysis, ethical considerations, and the challenges to the anticipated. The research is based on a desk review and the first-hand experience the researcher has with plea bargaining in Uganda. The researcher also used a quantitative research approach as the researcher relied on statistics and graphs supporting the thesis carried out.

1.11.2 RESEARCH DESIGN

The research was conducted in Uganda for 5 months. The researcher used his experience in plea bargain agreements in Mukono Chief Magistrate Court and surveys on case materials and judicial reports.

The research is an explanatory research design in affiliation with the primary research method as a mixed approach. The quantitative approach was be employed as the researcher relied on the court's annual records, reports, books, and journals on case disposal and case backlogs to ensure data accuracy.

1.11.3. MODEL SPECIFICATION.

The outcome variable in this research is plea bargain impact on the criminal justice system in Uganda.

1.12 DATA SOURCES.

1.12.1. DATA SOURCE PER VARIABLE.

The research was steered by collecting data from different sources. This was made possible through the use of desk reviews on court reports, records, articles, journals, and books and statutes on plea bargain and case backlogs at both common law and in Uganda, and how it affects criminal justice as a system of dispute resolution. The researcher also used his experience as a participant in Plea bargaining for two months at Mukono Chief Magistrate Court in 2024.

1.12.2 DATA PROCESSING AND ANALYSIS.

The researcher believed that the information acquired from the materials reviewed (alongside the experience he has), would be analyzed using graphs, pie charts, and spreadsheets. The data acquired would be processed using descriptive and statistical analysis. This comprises of the interpretation of the collected data, summarizing and presenting the key features of the data.

1.13 CHAPTER SYNOPSIS

The first chapter of this dissertation covers the introduction, background to the study, problem statement, objectives, specific objectives, research questions, justification, significance, literature review, research design, methodology, scope of the study, geographical scope, time scope, and chapter synopsis. Chapter two consists of the international and domestic legal framework governing plea bargaining in Uganda. Chapter three addressed the effect of plea bargaining in Uganda's criminal justice system, alongside the challenges it poses to parties in a plea bargain agreement. Chapter four which discusses the findings of the researcher based on the analyses of

the data collected. Lastly, Chapter 5 covers the conclusion and the possible recommendations based on the findings of the researcher; discussing the silver lining between the effect and challenges of plea bargaining in Uganda's criminal justice.

CHAPTER TWO: LEGAL FRAMEWORK OF PLEA BARGAIN IN UGANDA

2.0. INTRODUCTION.

Plea bargain is a fundamental alternative to litigation is recognized in the international society, thereby allowing negotiated agreement between the courts of judicature, the state attorney, and the accused. This section examines the domestic and international laws regulating plea bargaining under criminal law. The international laws which facilitate the principles of plea bargaining includes; The Rome Statute of the International Criminal Court (1998), United Nations Convention Against Transnational organized crime (UNTOC), International Criminal Court (ICC), The African Charter on Human and People's Right, and The International Covenant on Civil and Political Rights (ICCPR). On the other hand, Uganda, as a sovereign state and a member of many treaties and conventions, has established domestic laws to ensure and promote plea bargaining. These laws include the 1995 Constitution of the Republic of Uganda (as amended), the Penal Code Act, the Trial and Indictment Act, the Judicature Act, the Judicature (Plea Bargain) Rules 2016 and, the Magistrate Court Act.

2.2.0. INTERNATIONAL INSTUMENTS

2.2.1. ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC), 1998

The Rome Statute was enacted to facilitate the International Criminal Court in the protection of the rights of victims of heinous crimes such as war crimes and crimes against humanity, protection of the rule of law and the prevention of future crimes.

The preamble of the Rome Statutes emphasizes the jurisdiction of the International Criminal Court, of which the act stipulates that the ICC shall be complementary to the

National Criminal Jurisdiction of a member state of the United Nations. **Article 65**[17] further recognizes the plea of guilt as part of criminal proceedings. It imposes an obligation that before the admission of guilt is made, the court must determine whether the admission was made voluntarily, if the admission is based on the facts of the case, and if the accused fully understands the effect of a plea of guilt. Plea bargain as a more conventional model ratifies to Article 65 as parties to plea bargain are to plead guilty to the charge(s) willingly brought against them for a reduced sentence or charges. This is an essential aspect of plea bargain, considering that forfeiture of one's right to a proceeding must be one that the accused was voluntarily willing to plead guilty so save courts time in exchange of a lesser charge or sentence.

2.2.2. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (UNTOC)

UNTOC was established to tackle the growing rate of organized crimes across countries in the year 2000's. It encouraged countries to adopt countermeasures to regulate the rate of crimes like human & drug trafficking, arms smuggling, and money laundering. **Article 11**[18] focuses on the need for proportionate and effective sanctions on transnational organized crimes. It stipulates that in the adjudication of organized transnational crimes, the court has to take into consideration the weight of the crime and the level of cooperation with all parties. In the broader context of this convention, this is used strategically in plea bargaining as the period of incarceration depends on the accused's understanding of the nature of the offence, the level of

[17] Article 65 Rome Statute of the International Criminal Court

[18] Article 11 United Nations Convention Against Transnational Organized Crime

cooperation between all parties, the voluntary admission of guilt, and other mitigating factors of the suit. This helps the international courts in combating organized crime is a social study that alludes a great number of youths into participating in such crime, of which upon apprehension, the courts become overwhelmed by the number of cases that are to be heard by the court. Thus, issuing Article 11 as a faster and more efficient manner in achieving the goal of justice within a short period of time.

2.2.3. THE INTERNATIONAL CRIMINAL COURT OF PROCEDURE AND EVIDENCE RULES

The International Criminal Court (also known as the ICC) succeeded after ad hoc tribunals to promote accountability and pre-emption of future crimes. Though the International Criminal Court does not expressly provide for plea bargain, it promotes efficiency in criminal proceedings, ensure fairness and due process, and facilitation of international cooperation among member states. **Rule 139**[19] provides that before the trial judge takes into record the admission of guilt of the accused, the trial chamber needs to consult with the prosecution and the defense counsel. This highlights the benefits of plea bargain programs as Rule 139 ensures that the admissions of the accused were made voluntarily and that the accused is aware of the consequences of pleading guilty with the facts at hand. Furthermore, this is an extension of the element of consent in a contract that for an agreement to be binding, i.e. plea bargain, both parties must have freely entered into the contract for the agreement to be legally enforceable.

[19] Rule 139 International Criminal Court of Procedure and Evidence.

2.2.4. THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The primary objective of this act is to promote, protect, and ensure human rights by member states of the African Union. Amongst these rights, **Article 7(1)**[20] emphasizes the right to a free trial. It provides for the right to be tried 'within a reasonable period' which also extends to one's right to be legally represented and advised accordingly on the charges brought against the accused. The courts of judicature have been found wanting in the dispensation of cases within a reasonable time frame, which synonymously violates the right of access to justice. This gives a leeway to the facilitation of plea bargaining as the accused have been advised on alternative dispute resolution, such as plea bargain and its effect in relation to full litigation and the dispensation of justice.

2.2.5. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The ICCPR, like many international statutes, seeks to promote and protect human rights. However, it stands out as it majors on civil and political rights in the international spectrum. By the recognition of inherent dignity and equality, **Article 14**[21] provides that accused persons are entitled to a free and impartial trial before a competent court or tribunal. This identifies that upon adjudication of criminal cases, the accused shall be given enough time to prepare, plan, make discoveries/interrogations, or negotiate with the prosecution on the likely possibility of how the case should proceed.

[20] Article 7(1) African Charter on Human and Peoples' Rights.

[21] Article 14 International Covenant on Civil and Political Rights

Justice delayed is not justice at all. The states should be able to address issues of the state when needed the most-not in the aftermath or when the issue has already been taken good care of. This relates to plea bargains as it is an alternative to litigation, which has quasi-judicial powers to handle criminal matters. Consequently, providing an avenue for the accused to opt for a Plea Bargain to make compromises and agreements with the state attorney without duress or coercion, rather than undergoing the full course of litigation without having an estimated period of how long such a proceeding might take.

2.3.0 REGIONAL LAWS

2.3.1. THE 1995 CONSTITUTION OF THE REPUBLIC OF UGANDA (AS AMENDED)

The Constitution, the supreme law of Uganda, defines the legal framework for governance, protection of rights, and enforcement of the rule of law and democracy. Chapter Four of the Constitution provides for the protection and promotion of human rights under which **Article 28**[22] provides for the right to a fair and speedy trial before an impartial and independent court or tribunal. Laying reference to Article 28, the provision ushers in a principle in plea bargaining which deals with the dispensation of justice within a reasonable and practicable time frame. This principle aligns with the objective of plea bargaining as it offers a faster mechanism for resolving cases in Uganda rather than relying on the static bureaucracy of court proceedings.

[22] Article 28 Constitution of the Republic of Uganda (as amended)

Article 126(2)[23] further recognizes plea bargain as it emphasizes that justice should be done without undue regard to technicality. This encourages alternative dispute resolution mechanisms i.e. Plea bargain programs, which might not be expressly provided for in Uganda's criminal or civil procedure rules, but it promotes and enforces substantial justice in adjudicating disputes while still conforming to the principles of equity and natural justice.

2.3.2. THE JUDICATURE ACT CAP 16

The Judicature Act of Uganda is a vital act that defines the hierarchy, powers, and structure of the courts of judicature. It lays out the guidelines and safeguards in ensuring access to justice from a free, independent, impartial and competent court of law. Amongst the court of judicature, the act provides for the Rules Committee of which **Section 44**[24] provides that this committee shall regulate and prescribe method of pleading (including plea bargaining instruments), practice or procedure of the court. Based on the Rules Committee's powers, the Judicature (Plea Bargain) Rules 2016 was created. This act was enacted to helps create a blueprint of how alternative methods of pleadings should proceed, and the patterns to be taken in certain circumstances in such proceedings.

2.3.4. THE JUDICATURE (PLEA BARGAIN) RULES 2016

The Judicature (Plea Bargain) Rules was enacted in 2016 to formally recognize and regulate plea bargain proceeding that arises within the criminal jurisdiction of

[23] Article 126(2) Constitution of the Republic of Uganda (as amended)

[24] Section 44 Judicature Act.

Uganda's justice system. Its establishment was to remedy the overwhelming statistics of case backlog in the country which posed a threat to access to justice. The act lays out the steps and considerations to be accounted for before a plea bargain agreement is concluded. For instance, **Rule 5**[25] provides that, for a plea bargain agreement to be valid and binding, both parties must consent by signing the agreement alongside the charges and the agreed sentence. However, it is key to note that **Rule 9**[26] emphasizes that all suggestions and resolutions should be made with consideration of the position the accused have put the aggrieved party.

The principle of an accused presumed to be innocent until proven guilty or **has plead guilty** applies in plea bargain. Rule 9 mandates that plea bargain needs to be entered voluntarily as the accused waives some fundamental constitutional rights in litigation and pleads guilty to the charges brought against him/her. With plea bargaining being a right, either party as provided in **Rule 14**[27] can withdraw from plea bargain at any point in the proceeding before judgment is entered.

2.3.5. THE MAGISTRATE COURT ACT CAP 19

The Magistrate Court Act (MCA) provides for the architecture of the jurisdiction and powers of the magistrate courts. It defines the nature of cases that shall be handled by the magistrate courts and the legal proceedings on how such cases should be handled by these courts. Plea bargaining as a mechanism for dispute resolution was

[25] Rule 5 Judicature Plea Bargain Rules 2016.

[26] Rule 9 Judicature Plea Bargain Rules 2016.

[27] Rule 14 Judicature Plea Bargain Rules 2016

not enforced to deal away with court proceedings but to complement the court process in its short comings. It is to that effect that when the charge sheet is read and the accused pleads guilty to the charges lodged against him or her. **Section 133**[28] provides that the court shall enter into negotiations with the prosecution on the penalty that should be accorded to the accused after considering both the mitigating and aggravating factors of the case. This helps the accused case as the court shall then take into account the level of cooperation of the accused alongside the time and resources saved pertaining the case before the court.

Additionally, **Section 159**[29] provides for **Summary trial proceedings.** This is a type of court proceeding that works hand-in-hand with plea bargaining in making certain that minor/petty criminal offenses are resolved expeditiously in line with the protection and enforcement of justice in criminal proceedings.

2.3.6. THE PENAL CODE ACT CAP 128

The Penal Code Act (PCA) serves as the principal legal framework that determines what constitutes a crime in Uganda. The Penal Code determines the gravity of an offence, the penalty that should be annexed to specific crimes, and how to maintain law and order in the country. Proportional to alternative dispute mechanisms, the Penal Code Act plays a vital role in plea bargain agreements as it guides the prosecution and the court on the ideal penalty or period an accused should be

[28] Section 133 Magistrate Court Act

[29] Section 159 Magistrate Court Act

incarcerated based on the offense. For instance, **Section 6**[30] of this act provides a benchmark on the leniency of the court in determining the extent to which a person's sentence or charges should be reduced after considering the circumstances surrounding the case (also known as mitigating factors).

2.3.7. THE TRIAL ON INDICTMENT ACT CAP 25

The Trial on Indictment act stems from the penal code. The act specifically provides for the laws that regulate trials for criminal offenses that require indictments. The act lays out the jurisdictions of courts in cases pertaining indictment and the procedure for adjudicating such offenses before a court of competent jurisdiction.

In an ongoing case, **Section 64**[31] stipulates that after the charges have been read and the accused pleads guilty to the charges brought against him/her, the court shall immediately record the plea and convict on it. Allowing the alteration of the plea of the accused creates an avenue for the accused person to opt for a plea bargain. This helps to save both his/her time and that of the court, alongside being able to salvage a lesser charge[32] in exchange for pleading guilty to the charges.

[30] Section 6 Penal Code Act

[31] Section 64 Trial on Indictment Act

[32] Rule 6 Judicature Plea Bargain Rules 2016

CHAPTER THREE: INTRICACY OF PLEA BARGAINING ON THE ADMINISTRATION OF CRIMINAL JUSTICE IN UGANDA.

3.1 INTRODUCTION

Plea bargaining amongst other strategies adopted by the Judiciary of Uganda was a piloted program initiated in 2014 to benefit the state, the accused, and the society[33], alongside the fact that inmates in remand outweighed convicts serving sentences[34].

This concept of has surfaced to be one of the most revolutionary mechanisms that have been adopted in many administrative systems around the globe. Uganda, being

[33] Https://Www.Newvision.Co.Ug/Category/News/Chief-Justice-Roots-for-Plea-Bargain-NV_182744. Accessed on 13th February 2025

[34] https://judiciary.go.ug/files/downloads/case%20backlog%20Report%20final.pdf. Accessed on 13th February 2025

one of the countries that ratified this concept, has incorporated plea bargaining as a legally binding procedure in the resolution of civil and criminal matters. This adoption has not only brought about the reduction of case backlogs, but also a more efficient and reliable system.

3.2 POSITIVE EFFECTS

3.2.1 PLEA BARGAIN FACILITATES THE EFFECTIVENESS AND EFFICIENCY OF THE CRIMINAL JUSTICE SYSTEM

The spirit of plea bargain as a form of alternative dispute resolution is not to oust the jurisdiction of the courts of judicature[35]. Rather, it seeks to complement the judicial process in resolving disputes by offering accused persons alternative means of litigation which is still under the jurisdiction of the judiciary.

The criminal justice system of Uganda in ensuring the efficiency of court proceedings does not only have to ascertain that cases are duly disposed of, but to make sure that allegations brought against accused persons are resolved within a reasonable period of time while still following both natural justice and the criminal procedure rules. However, dating as far back as 2009, Uganda as a sovereign state and an independent body called the 'Judiciary', has heard incidences whereby due to lack of manpower and resources, inmates have been in remand for as long as two years without being brought before court for hearing[36].

[35] Cargill Zambia v Culvenhum Trading (Pvt) Ltd [2006] ZWHHC 42

[36] Hon Justice Dr.Yorokamu Bamwine (2015) "Analysis of What Has Happened Since February 2014 to Clean Up Case Backlog: Successes, Challenges, Targets and Strategies for Performing Better"

Nevertheless, plea bargain aims to assist these courts by offering a platform whereby accused persons who save courts time and resources by voluntarily pleading guilty to the charges brought against them are given a lesser sentence or reduced charges in pursuant to reduce the overwhelming burden of case backlogs that the court has to handle. This means that the system would no longer be stagnant as courts and plea bargain programs would serve as double agents in upholding the right to a free and fair trial while at the same time, rebuilding the public's trust in the system.

3.2.2 PLEA BARGAIN ALLEVIATES CASE BACKLOGS

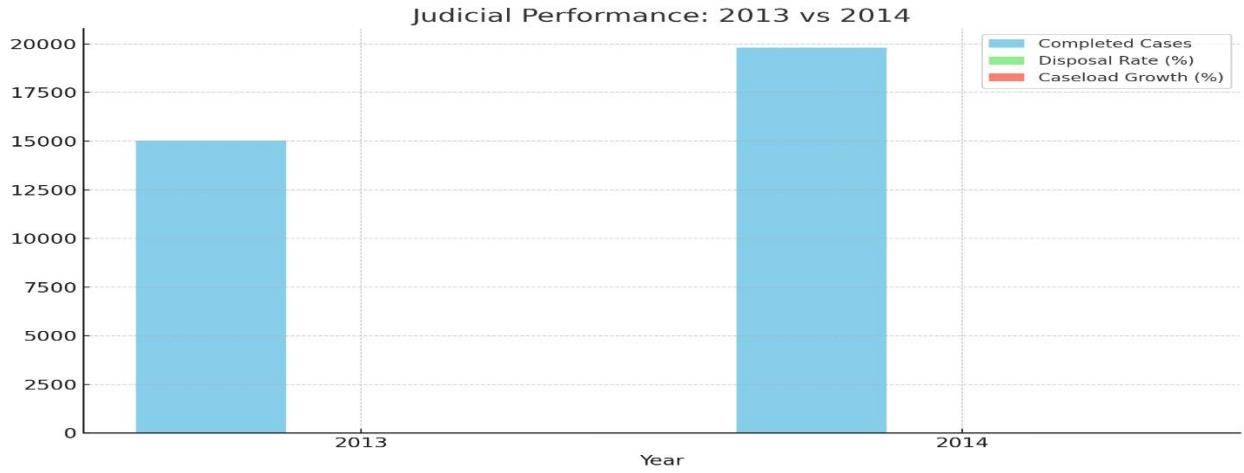
Synonymous to ensuring efficiency of the courts, plea bargain offers a leeway in the reduction of case backlogs in Uganda. The objectives of the plea bargain in Rule 3[37] is for plea bargain programs to facilitate in the reduction of case backlogs in Uganda. From the Judiciary report of the case backlog reduction committee, over the last decades, with the recognition and adoption of plea bargain into the criminal justice system in Uganda, there has been a massive improvement in the reduction of pending cases, and, curtailing the flaw gates of case backlogs[38].

In 2013 with a total of 15,037 completed cases to an increase of 4,767 completed cases in 2014 (a total of 19,804). The statistics showed an improvement in the disposal rate from 25% (2013) to 29% (in 2014) and a decrease in caseload growth from 19% (2013) down to 12 % in 2014. Within these statistics, under the plea bargain

[37] Rule 3 Judicature Plea Bargain Rules.

[38] https://judiciary.go.ug/files/downloads/case%20backlog%20Report%20final.pdf. Accessed on 13th February 2025

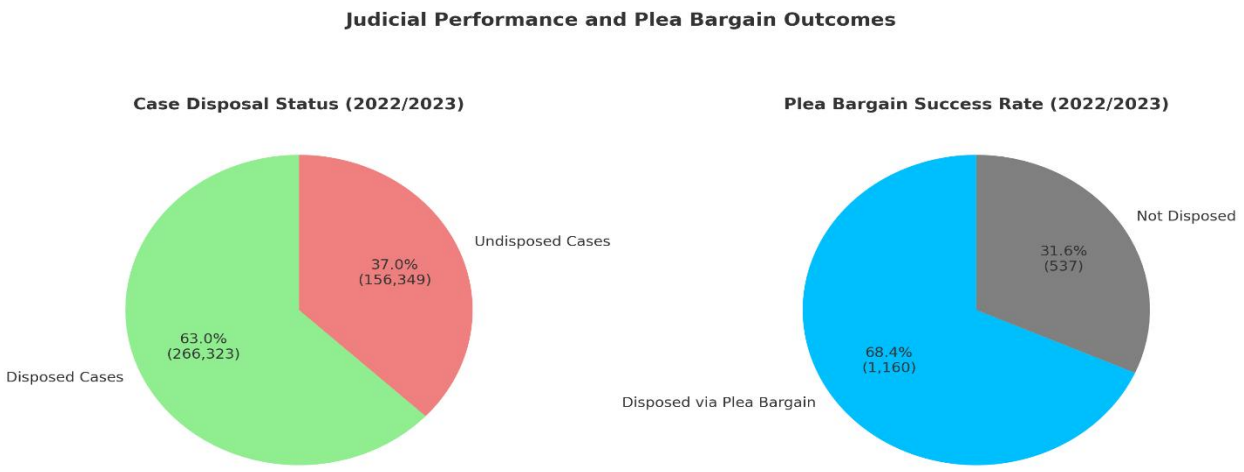
program in Fort Portal, Jinja, Masaka, Mbarara, Luwero, Kampala, and Mbale High Court Circuits, 719 cases were disposed[39].



In 2022/2023, out of 422,672 cases, 266,323 cases were disposed of, accounting for a reduction of case backlogs in 2020/2021 from 32% to 27.48%. Additionally, plea bargain had a success rate of 88.12% as it disposed of 1,160 cases from a total of 1,697 cases through plea bargain camps[40].

[39] Hon Justice Dr.Yorokamu Bamwine (2015) "Analysis of What Has Happened Since February 2014 to Clean Up Case Backlog: Successes, Challenges, Targets and Strategies for Performing Better"

[40] Alfonse Chigamoy Owiny -Dollo, "Opening of the New Law Year 2023 | Address of the Hon. The Chief Justice of Uganda"



Having in mind that the crime rate in Uganda is at the increase, plea bargain has promoted efficiency of the courts by dealing with accused individuals who have voluntarily pleaded guilty to the charges brought against them for a lenient penalty.

3.2.3 PLEA BARGAIN ENSURES LEGAL FINALITY

Legal finality is one of the key aspects of the outcome of plea bargain. The Plea Bargain Rules enshrines that an accused person entering into a plea bargain agreement by default has waived his or her rights to appeal, except if the judge acts outside the agreement or the in a matter of the legality of the severity of the sentence imposed on the accused[41]. This is to say that plea bargain ensures a fast mode of resolution of criminal cases in Uganda.

Reflecting on the bureaucracy of criminal litigation, apart from the time and resources which are invested in to ensuring that a due process is followed in enforcing

[41] Rule 12(1)(g) Judicature Plea Bargain Rules 2016.

justice to an aggrieved party, the accused person under Article 28(9)[42] have the right to appeal the decision of the trial court to a superior court. This elongates the time span to which a case is to be heard and resolved. However, with plea bargain, with the approval of the trial magistrate on the plea agreement entered between the state attorney and the accused is binding and final. Thus, bringing relief and an end to the painful experience during a trial.

3.2.4 PLEA BARGAIN PROTECTS THE RIGHTS OF ACCUSED PERSONS IN ACCESSING JUSTICE

Plea bargain while upholding the right to a speedy trial[43] provides an avenue for accused persons to be heard without delay of being heard before a court of competent jurisdiction. Analyzing the intricacy of criminal litigation, the criminal justice system have the habit of intentionally or by default, protect the rights and interest of the victim/aggrieved party, at the expense of the rights of the accused and this has been unfair to most inmates as the court have a precedence on how long it takes for a case to be heard and concluded, thus, making the accused a victim of the rules of procedure.

But, with the adoption of plea bargain into the criminal justice system, it provides for the protection and enforcement of the rights of both the victim/aggrieved party, and that of an accused person. For instance, one of the cardinals of plea bargain is that the interest of the accused is taken into account, and the circumstances of the case is

[42] Article 28(9) Constitution of the Republic of Uganda.

[43] ibid.

put into consideration before the agreed punishment is approved by the trial magistrate[44].

Unlike in criminal cases where the state attorney persuades an accused person into taking plea deals that might compromise their chances of actually getting the justice that all parties involved deserve, plea bargain ensures that all plea deals that are made under plea bargain agreements are to be entered voluntarily without duress or undue influence of an interested party. Thereby promoting not only fairness but also the protection of the dignity of the accused.

3.2.5 PLEA BARGAIN REDUCES PRISON CONGESTION AND IMPROVEMENT OF HEALTH CONDITIONS.

The aftermath of having a country like Uganda having case backlogs is that there would be a point in time whereby the prisons and remand homes would not be enough to accommodate all inmates. The reason is simply the fact that there is an overwhelming number of accused persons who have been in remand for as long as 2-10 years without being presented before court for a hearing[45], or that their cases have not been concluded to ascertain their period of incarceration.

[44] Rule 12 Judicature Plea Bargain Rules 2016.

[45] Hon Justice Dr.Yorokamu Bamwine (2015) "Analysis of What Has Happened Since February 2014 to Clean Up Case Backlog: Successes, Challenges, Targets and Strategies for Performing Better"

Since these prisoners are serving their time, they all have the right to a healthy and safe environment[46]. And this right is non-derogable in nature.

However, because of the efficiency of plea bargain programs over the past decade, though there were setbacks during the COVID-19 pandemic, there has been a drastic improvement in Uganda prisons due to the reduction of case backlogs by such programs. This has help to the improvement of the health condition of prisoners, access to healthcare, adequate living spaces for inmates, adequate feeding and improved sanitation.

The eradication of congestion in prisons has also improved social and psychological benefits for prisoners. Congestions of prisons lead to limitation of available resources of which inmates (in their violent nature) would create fear, tension or violence in order to have monopoly over other inmates. This also defeats the purpose of prisons, as inmates drift away from a rehabilitative state of mind to a mental state of survival and violence.

3.2.6 REDUCTION OF THE TIME SPENT BY THE PRISONER WHEN PREVENTING PERPETUAL PUNISHMENT.

While understanding plea bargain, one would get to realize that plea bargain only suffices if there is an agreement, and the elements of a contract bind this agreement. The United States Supreme Court in Santobello v New York[47] defined plea bargain as: "The disposition of criminal charges by agreement between the prosecutor and the

[46] Article 39 Constitution of the Republic of Uganda.

[47] Santobello v New York 404 U.S 257 (1971) (Supreme Court, United States)

accused, sometimes called ‘plea bargaining’ is an essential component to the administration of Justice”.

The quid pro quo in plea Bargain is that when a person who is alleged to have committed a crime pleads guilty to the charges brought against him/her, the court in exchange either reduces the charges or the sentence period that the accused would have served if he/she was found guilty in a criminal trial. However, to ascertain the extent to which the courts are to be lenient, there are certain factors which are considered on a case-to-case basis to ensure that though the accused is serving lesser than that he/she is ought to, the justice owed to the victim(s), aggrieved parties and the society is not infringed upon at the interest of the accused person or to save court's time and resources. Thereby creating an equilibrium between justice, rehabilitation, and leniency.

3.2.7 PLEA BARGAIN PROMOTION OF RECONCILIATION AND SOCIETAL PEACE

Plea bargaining fosters a restorative form of justice. When an offender acknowledges guilt and seeks a negotiated settlement, it opens the door for apologies, compensation, and emotional healing. This is especially useful in societies with strong communal ties, like many communities in Uganda, where reconciliation and social harmony are valued. Through plea bargains, victims may feel a greater sense of closure and justice, knowing that the offender has accepted responsibility[48]. In some cases, this process may involve traditional justice systems or community-based

[48] Rule 3 Judicature Plea Bargain Rules

mediation, which strengthens the societal fabric and reduces the likelihood of retaliatory actions or prolonged grievances.

One of the gaps plea bargain addresses is the issue of reconciliation. Since time immemorial, justice under common law have been punitive in nature. In other words, when a person is found to be guilty of the charges brought against them, the consequence of their crime is to be in isolated from the public under the supervision of the government.

To an extent, such punitive measure brings closure to the victims, the family of the aggrieved and the society at large. But these measures are retributive rather than rehabilitative.

Because of the conditions and way of life that a prisoner has been subjected to, it is hard for them to reconcile with their actions and the victims of their crime, thereby creating a tension and fear when the accused have served their time.

On the other hand, plea bargain promotes not only a faster mechanism for disposing cases but also provide an avenue for reconciliation between all parties to the suit[49]. In light of Article 126(2)(d)[50], before an agreement is made between the accused and the state attorney, the aggrieved party is invited to the agreement to be able to get closure and reconcile with each other. Thus, making rehabilitation easier for all parties. It is also important to note that the reconciliation also helps when

[49] Robert Nanima (2017) "The Need for a Review of Plea Bargaining in Uganda: A Reflection on the Experiences under Common Law and in South Africa" https://hdl.handle.net/10520/EJC-6ed73c837. Accessed on 2nd April 2025

[50] Article 126 (2)(d) Constitution of the Republic of Uganda.

considering the mitigating factors before a court determines the punishment to be served by the accused.

3.2.8 CONCLUSION.

Taking all factors into account, it is evident that the implementation of plea bargaining into the criminal rules of procedure has advanced the efficiency, reliability, and productivity of resolving disputes in the criminal justice system of Uganda. The implications of this program have inferred substantial benefits not only accused individuals, but also the victims of the suit, the courts of judicature, society, and all other stakeholders that are involved in plea bargaining.

3.3 NEGATIVE EFFECT

3.3.1 INTRODUCTION

Be that as it may, acknowledging the complexity of plea bargaining in intending to expedite the legal burdens of the courts of Uganda, these practices have raised significant concerns, arguing that plea bargaining has undermined the administration of justice in Uganda. Many have criticized that plea bargain prioritizes speed over thorough scrutiny which erodes the objectives that are set out in the Judicature (Plea Bargain) Rules and the principles of natural justice. This sector of chapter three shall discuss the negative impact that plea bargain poses in Uganda.

3.3.2 PLEA BARGAIN LEADS TO RISK OF COERCION AND FALSE CONFESSIONS

One of the most serious criticisms against plea bargaining as an alternative dispute mechanism as compared to criminal proceedings is that plea bargaining tends to instill

pressure on alleged criminals to plead guilty to the charges brought against them when they are innocent.

Justice being vital, the accused must be willing to expressly waive his fundamental right as an accused person by voluntarily pleading guilty to the charge(s) alleged against the accused[51]. Sometimes, because of the grip plea bargain has on criminal justice, it is easy to lose sight of the fact that there are situations whereby accused persons are indirectly coerced into entering pleas that they initially do not intend to opt for. It is evident reality that when an accused is remanded, the fate of his next appearance in court is most likely unknown. Consequently, when these inmates have the opportunity to get a lenient charge or sentence, their advocates at times indirectly instill the fear of an unforeseen chance of seeking justice if the initial court procedure is to be followed. Some advocates go to the extent of even convincing the accused to plead guilty when their case is a clear win to prove their innocence

Furthermore, pressure also stems from the fact that the bureaucracy of criminal litigation in Uganda is not only tedious but also unpredictably lengthy. And because of that, the most rational option for the accused is to enter into a plea bargain agreement to start serving their sentence(s) as soon as possible, knowing fully well that there is the likelihood of actually winning the case in court. This compromises the principle of "innocent until proven guilty."[52].

[51] Rule 12 Judicature Plea Bargain Rules.

[52] Article 28 Constitution of the Republic of Uganda (as amended)

3.3.3 PLEA BARGAIN UNDERMINING THE RIGHT TO A FAIR TRIAL

Plea Bargain in an attempt to complement Criminal proceedings in its shortcomings has eluded the structural procedure that accounts for transparency in a trial process. By obviating trial, there is little or no scrutiny of the facts of the case against the accused, less ability in challenging the case of the state attorney, evasion, and the likelihood of reducing chances of procedural error. This weakens the very core principles of the criminal justice system in Uganda as plea bargain prioritizes success rates over substantial justice.

Though scholars like Moise Berger in his thesis "The case against Plea Bargain"[53] stated that plea bargain is a necessary evil. Sometimes the necessity should be on a case-by-case basis to ensure that within the interest of the court, the aggrieved party, the society, and the accused interests should not out way the other.

3.3.4 PLEA BARGAIN ALLOWS INTERDETERMINATE SENTENCING

Plea Bargain ushers in the concept of interdeterminate sentencing. Interdeterminate sentencing is a type of custodial sentencing that comprises a range of years an accused can serve for an offense[54] but has no fixed duration for such an offense. Under interdeterminate sentencing, the state attorney, with the approval of the court, determines the duration an accused is to serve based on the mitigating and aggravating factors surrounding the case and its effect on the parties involved. With

[53] Moise Berger (1976) "The Case against Plea Bargaining", vol 62 American Bar Association, pp 621-624

[54] Section 3 Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

plea bargain in play, accused persons who agree to enter a plea bargain agreement with the court enjoy the lenity of interdeterminate sentences.

3.3.5 POWER IMBALANCE BETWEEN PROSECUTION AND DEFENSE

Given the dynamics of plea Bargaining, there exists an imbalance of power between the prosecutor (who is the state attorney) and the defendant. In light of the fact that in plea bargain, before a plea agreement is made for approval, the prosecutor considers the aggravating and mitigating factors, alongside having a yardstick on which offer can be accepted and which cannot.

There is also the issue of intimidation. Bearing in mind the period an inmate has spent on remand, some of these alleged criminals when bargaining with the prosecutor have no legal representation, thereby making it easier for the state attorney to determine the course of the plea bargain arrangements even when the evidence might not support the original charges brought against the accused persons.

3.3.6 PLEA BARGAIN VIOLATES THE FUNDAMENTAL HUMAN RIGHTS OF THE ACCUSED

With the adoption of plea Bargaining in 2014, there was a need for restructuring in order for the program to find its fittings in the judicial system. This created friction between the Constitution and the rules governing plea bargain. There are fundamental rights that the Constitution of Uganda guarantees for people who are charged with an offense or imprisoned. On the other hand, for a plea bargain to be

efficient the accused has to agree to waive the right to an appeal, the right to a full trial, the right to testify during a proceeding, and the right to be presumed innocent[55].

Rule 12 provides that the court has to ensure that the accused person understands that he or she is not entitled to plead not guilty, to be presumed innocent until proven guilty, to remain silent and not to testify during the proceedings, and that he/she forfeits the right to a full trial[56].

The forfeiture of these rights cripples the pillars upon which the plea bargain program was established whereby the very rights that the constitution bestows protection upon every person in Uganda is taken away from the accused person in exchange for a lighter or reduced charges or sentence.

3.3.7 POSSIBILITY OF INJUSTICE AND LIGHT SENTENCES

Plea Bargain promotes injustice in the society as individuals who have been found guilty of a crime are given an opportunity where they can plead guilty, resulting the court to give them a lighter sentence.

The Constitution (Sentencing Guidelines for Courts of Judicature) provides the yardstick that courts are meant to follow when adjudicating the proper sentence that a person ought to serve[57]. However, with plea bargaining, the sentencing guidelines have little or no effect in determining the period a person is to serve in prison. This is due to the fact that in exchange for pleading guilty, the court's leniency sentences

[55] Article 28 Constitution of the Republic of Uganda

[56] Rule 12 Judicature Plea Bargain Rules 2016

[57] Section 3 Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013

the accused person to a period in prison that is lesser than that which they ought to serve.

This agreement cuts across every type of criminal offense. Including offenses like corruption, rape, or murder which gravity is serious due to its effect to an individual and the society at large. This allows people to commit crimes, knowing fully well that with plea bargain, justice would always be tampered with mercy. Thus, the sentence deviates from the stipulated period of incarceration provided in the Penal Code.

3.3.8 PLEA BARGAIN INFRINGES ON THE INTEREST OF VICTIMS AND THE SOCIETY

While acknowledging the efficiency of plea bargaining in terms of rehabilitation, there are cases in which the interest of the community or the aggrieved party is not a paramount interest of the prosecution when negotiating a plea with an accused person. There are offenses such as rape, defilement, sodomy, and kidnapping which should not fall within the categories of cases that could be pleaded for.

Such offenses show significant intent of the accused in carrying out such an offence which courts are not to be lenient with. Convicts who are charged with such as rape and defilement should not be released back to society unless they serve the statutory sentence for such an offense. Plea bargain overlooks how the interdeterminate sentences affect the victims and the society at large. The accused might have eventually gone through rehabilitation and has become remorseful of committing such an offense, but the courts also have to consider if the society has healed from such an injury and is willing to accept such a person back as a member of the society.

3.3.9 CONCLUSION

In light of the above discussion, it is not in dispute that plea bargain have addressed a great deal of the short-comings of the criminal court system. However, in attempt to rectify the ills of the court, plea bargain has posed overwhelming challenges mostly as a result of the courts trying to meet the annual quota of disposing cases in time and the fact that there are little or checks and balances during a plea bargain process. Thus, defeating the purpose of the program.

CHAPTER FOUR: SUMMARY OF FINDINGS.

4.1.0 SUMMARY OF FINDINGS

4.1.1 INTRODUCTION

Taking everything into account, the intricacy of plea bargain as discussed in chapter three draws the correlation between promotion of criminal justice and the ramification of plea bargain in Uganda. The researcher in arriving at his findings employed a quantitative approach as the researcher relied on the court's annual records, reports, books, and journals on case disposal and case backlogs to ensure data accuracy. The researcher also used his experience in plea bargain agreements in Mukono Chief Magistrate Court of which he was able to participate in 46 plea bargain

agreements in the court, and 69 plea bargain proceedings at Kauga prisons in Mukono District.

The evaluation of these findings shows that the complexity of plea bargain lies in its dual nature: on one hand we have a system which have which have been as efficient as possible in disposing of cases within a reasonable period of time without acting outside the ambience of the law. While on the other hand, it simultaneously risks the very objectives that it was built upon. The discussion herein under shows the relationship between the intricacy of plea bargain and how it affects the promotion of justice in the criminal court division.

4.1.2 CONSTRUCTIVE EFFECT OF PLEA BARGAINING ON CRIMINAL JUSTICE ADMINISTRATION IN UGANDA

The administrative system of plea bargain in Uganda over the years have struggled with numerous challenges including; case backlogs, COVID-19 pandemic, prolonged pretrial detention, lack of resources and inadequate manpower. Summing up these challenges led to the gradual break down of the criminal justice system in Uganda.

In response to the failure of this system, plea bargain was adopted as an alternative method of adjudicating criminal cases as compared to court litigation.

The incorporation of this plea bargain went a long way as it addressed a great deal of challenges ranging from the burden of case backlogs to efficiency in speedy dispensation of justice alongside the leniency of sentence or/and charges after considering mitigating factor. This revived the vision of the judiciary of Uganda as it provided a solution to the short-comings of the court and a more flexible method for handling criminal cases.

4.1.3 ADVERSE CONSEQUENCES OF PLEA BARGAIN IN UGANDA'S CRIMINAL JUSTICE SYSTEM.

While plea bargaining has proven to be a vital tool in enhancing court's efficiency, it has also provided a margin for irregularities that goes against its very own objectives. In the course of achieving the vision of plea bargain as set out in Rule 3 of the plea bargain rules,[58] due to lack of oversight and distinctive guidelines, it has allowed for the miscarriage of justice.

As accessed in chapter three, this has led to direct and indirect coercion of accused persons into pleading guilty, prioritization of resolving cases quickly rather than focusing on ensuring justice, granting leniency in capital offenses, and misappropriation of judicial powers.

Subsequently, this has led to public distrust of the system primarily on two major rational motive: first is the fact that in drawing into conclusion, due to lack of oversight, the mitigating factors and the accused person interests are not taken as priority owing to the fact that the primary mission of plea bargain is to reduce the

[58] Rule 3 Judicature Plea Bargain Rules 2016

number of case backlogs in Uganda[59]. Secondly, the state attorney's office often tends to neglect the interests of aggrieved parties and their rights before recommending and concluding a plea deal.

4.1.4 PROCEDURAL CHALLENGES IN THE APPLICATION OF PLEA BARGAIN IN UGANDA.

The implications of the negative effect of plea bargain have left the courts with new challenges which poses a threat to access to justice to parties to a plea agreement. There have been instances where due to the coercion of an innocent person into pleading guilty, they mislay the possibility of winning in trial because plea bargain offers finality without a trial. Also, criminals (especially those who have been incarcerated more than once) use plea bargain as a way to ease their sentences, knowing fully well that they cannot be deprived plea bargain as it is a right which all persons whose case have not been resolved by court have the right to apply for.

Furthermore, another challenge faced during plea bargain is lack of precedence. When dealing with cases under plea bargain, such cases are heard on a case-to-case basis which makes it hard to have a codified pattern on how to address particular or special circumstances under law. In this regard, there are no standards on how cases should be heard as they are resolved based on the intellect of the trial magistrate and the prosecutor.

[59] ibid

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

Taking into account the history of Plea bargain and its current status in Uganda[60]. It goes without saying that the intricacy of plea bargain in Uganda is controversial in nature. From one perspective we have plea bargain as the initiative which was incorporated to stabilize and ensure efficiency in criminal proceedings, thereby reducing the number of case backlogs in Uganda, upholding the right to a speedy trial for inmates who have been in remand for more that the statutory period, ensured leniency of the courts while putting into consideration the accused individual co-operation as a mitigating factor, and creating an equilibrium of rights and interests among all parties involved in the suit.

[60] Stephen Mubiru (2011) "Plea Bargaining Within the Context of Transitional Justice: Exploring Its Potential for Promoting Peace and Accountability in the Wake of International Crime in Uganda" Utrecht University Netherlands.

Be that as it may, the researcher also uncover argument in a bid to confront the existing challenges. Plea bargain has created a leeway for infringing on the rights and interest of parties to achieve rapid dispensation of cases, manipulation of accused persons into entering plea agreements, and illegality/impropriety of the prosecutor and the court without checks and balances. Moreover, there have been valid concerns as the plea bargain rules[61] as it allows court to cease fundamental rights that are provided for all persons in the Bill of Rights which makes it easier to misrepresent or coerce an accused individual into opting for plea bargain.

5.2 RECOMMENDATIONS

5.2.1 DEVELOPMENT OF COMPREHENSIVE GUIDELINES AND REGULATIONS.

The Parliament should review the Judicature (Plea Bargain) Rule of 2016 and enact a more comprehensive and distinctive act as the plea bargain rules barely provide for how to arrive at an agreement between the court, the prosecutor, the accused and the aggrieved party. The plea bargain rules does not address plausible issues that might arise i.e. measures for the prosecutor acting ulta vires, the need for checks and balance, practical consideration of the interest of the aggrieved party and comprehensive penalties for illegalities and irregularities.

This is not to discredit the Plea Bargain Rules of 2016, but given the fact that plea bargain plays a major role in promoting the efficiency of the court for the past decade, it is only prudent that the house of parliament enacts a more comprehensive guideline that tackles all the possible anomaly that might arise during plea bargaining.

[61] Rule 12 Judicature Plea Bargain Rules 2016.

Thereafter, the parliament would be able to review the effectiveness of these enacted laws and how best it can address impending challenges.

5.2.2 PUBLIC AWARENESS AND LEGAL LITERACY CAMPAIGNS

Awareness goes a long way in dispute resolution. To achieve the objectives of plea bargain set out in Rule 3[62], the government, in collaboration with the judiciary should carry out awareness and legal literacy campaigns. These campaigns would first of all rectify the misconception that plea bargain is "free bargain" which is meant to help inmates have reduced sentences. Then the campaigns would also help both members of the society and inmates in understanding their fundamental rights in plea bargaining-and also help accused individuals understand the spirit of the courts, how it relates with plea bargain, and how their rights and interests can be protected during plea bargain programs. Thus, ensuring that all stakeholders are elucidated and fully aware of the nature of the plea bargain program and what it sets out to achieve.

5.2.3 MONITOR AND EVALUATE PLEA BARGAIN OUTCOMES.

Analogous to every successful institution, the judiciary should have periodic evaluation on the number of agreements made, the procedures that were followed, and the level of satisfaction gotten by the accused and the aggrieved party after the

[62] Rule 3 Judicature Plea Bargain Rules 2016.

agreement was made. This is not new to the Uganda Judiciary as they also do have their annual reports on the activities of every court in Uganda[63].

Monitoring and the evaluation of these proceedings would help the court know the general outcome of the program, thereby highlighting the challenges that were faced during dispute resolution and/or the need to make any improvements or adjustments to ensure a fully-proof mechanism of dispute resolution for criminal cases in Uganda.

5.2.4 ESTABLISHMENT OF INDEPENDENT OVERSIGHT BODIES

The Judiciary in affiliation with the parliament should establish an oversight committee. In enforcing the principles of checks and balances, in the same way that every department, ministry, sector, and unit of government have a body that regulates and disciplines the wrongs of individuals, parliament should establish a committee that oversees the deals of plea bargain in Uganda. By doing this, it the oversight committee would keep track of the day-to-day activities that are being carried out within the ambit of plea bargain and, ensure that the statutory guidelines are complied with to the latter. Furthermore, the oversight committee would also act as ethical institutional sentries, granted the mandate of disciplining stakeholders who act contrary to the stipulated guidelines as provided by law.

[63] Hon Justice Dr.Yorokamu Bamwine (2015) "Analysis of What Has Happened Since February 2014 to Clean Up Case Backlog: Successes, Challenges, Targets and Strategies for Performing Better"

5.2.5 DECENTRALIZATION OF PLEA BARGAIN TO ALL COURTS IN UGANDA

The judiciary should carry out the initiative of training state attorneys and judges into being qualified plea bargain practitioners. Just as arbitration, mediation and conciliation have bodies which trains and certifies persons who intend to be arbitrators, mediators or conciliators, plea bargain should also have its own institution which deals with the training and licensing of plea bargain practitioners.

This would not just ensure certified qualification of the judges and the prosecutors who carryout plea bargain agreements but also help in efficiency as there would now be judges and attorneys who specializes in criminal proceedings and those who specifically deal with plea bargain agreements.

5.2.6 RIGHT TO APPEAL AND REVIEW.

The legislature should amend and allow reviews and appeals in plea bargain. The Plea Bargain Rules enshrines that subject to the procedure for recording plea bargain agreements, the court have to ensure that the accused person understands his or her rights, and that he/she upon entering a plea agreement waiver some of their fundamental rights. One of these rights is the right to appeal[64]. The rationale for the forfeiture of the right to appeal is to ensure the finality of cases.

However, with the powers bestowed upon prosecutors and judges that preside over plea agreements and the fact that there is little or no oversight in what happens during these agreements, there are cases upon which rights of accused persons were infringed upon. With the right to seek leave of court to appeal or review the period of

[64] Rule 12 Judicature Plea Bargain Rules 2016.

incarceration, it would ensure that all steps taken by both the judges and the prosecutors are in-line with the plea bargain statutory guidelines.

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