

**THE EFFICACY OF PLEA BARGAINING IN THE PROMOTION OF THE
CRIMINAL JUSTICE: PROS AND CONS**

FRANK NYESIGYIRE

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DECLARATION

I confirm that this research proposal, with the exception of appropriately quoted references to the work of others, is entirely my own. It has not been submitted in any form for any degree elsewhere. All sources consulted and utilized are duly acknowledged in the reference section.

STUDENT: NYESIGYIRE FRANK.

SIGNATURE:

DATE:.....

APPROVAL.

This dissertation has been approved for presentation as partial fulfillment of requirements leading to the award of the degree of Bachelor of Laws of Uganda Christian University.

SUPERVISOR: MR.WANDA.PETER.BENJAMIN.

SIGNATURE:

DATE:

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Dedication

This study is dedicated to everyone who wants justice, fairness, and integrity in the criminal justice system.

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Abstract

The efficiency of plea bargaining in the criminal justice system is examined critically in this study with reference to its operational, legal, and ethical issues. As a mechanism primarily used to expedite criminal cases and alleviate court congestion, plea bargaining has been a central component of most justice systems around the world. However, greater reliance on it throws grave doubts regarding fairness, voluntariness, and undermining fundamental rights.

The study explores the historical development of plea bargaining, its statutory basis in various jurisdictions, and the different forms it can take, i.e., charge bargaining, sentence bargaining, and fact bargaining. It also explores the theoretical justifications which lend legitimacy to its practice, i.e., efficiency, resource management, and promoting judicial economy. However, it also refers to criticism that frames plea bargaining as a procedure that may compel defendants to waive their right to a fair trial under unfair bargaining terms and with limited understanding of the consequences.

Methodologically, the study adopts a mixed approach: doctrinal analysis to examine statutory provisions and case law governing plea bargaining, and qualitative data gathered through questionnaires with legal professionals such as judges, prosecutors, and defense lawyers. This allows for a thorough understanding of the way plea bargaining works in practice and whether it is effective in its desired outcomes.

The findings indicate that although plea bargaining can significantly reduce delays and expenses of trials, it may also compromise the ideals of justice by prioritizing expediency over the discovery of truth. Inequalities in legal representation, the discretion of prosecutors, and the limited supervision of judges often result in unequal outcomes. The research underscores the need for stricter procedural protections, greater transparency, and more standardized practices to ensure that plea bargains are truly voluntary, informed, and equitable.

Lastly, the study argues that while plea bargaining is a good and precious institution in modern criminal justice systems, its efficacy must be quantified not only on the criterion of efficiency but also in respect for the rule of law and protection of individual rights. The article demands reforms aimed to enhance accountability, reduce coercion, and unify legal protections for defendants in plea agreements.

TABLE OF CONTENTS

1.1. BACKGROUND TO THE STUDY.	11
1.1.1 HISTORICAL BACKGROUND.	12
1.1.2 CONCEPTUAL BACKGROUND.	13
1.3. PROBLEM STATEMENT.	14
1.4. OBJECTIVES	15
1.4.1 GENERAL OBJECTIVE.	15
1.4.2 SPECIFIC OBJECTIVES.	15
1.5. JUSTIFICATION.	15
1.6. SIGNIFICANCE.	15
1.7. LITERATURE REVIEW.	16
1.7.1. INTRODUCTION.	16
1.8. RESEARCH DESIGN.	21
1.9.METHODOLOGY.	21
1.8.1. GEOGRAPHICAL SCOPE.	22
1.8.2. TIME SCOPE	22
Introduction	24
INTERNATIONAL LAWS/TREATIES;.....	26
International Covenant on Civil and Political Rights (ICCPR);.....	26

European Convention on Human Rights (ECHR);	26
REGIONAL INSTRUMENTS;	27
African Charter on Human and Peoples' Rights;.....	27
NATIONAL LAWS;.....	27
The 1995 Constitution of the Republic of Uganda as amended;	27
The Penal Code Act Cap 128;.....	28
The Magistrate's Court's Act Cap 19;	28
The Trial Indictments Act Cap 25;.....	29
The Evidence Act Cap 6;.....	29
The Judicature (Plea Bargain) Rules of 2016;.....	30
Forms of Plea-bargain;	30
The Trial judges;.....	32
Accused and plea-bargain;.....	32
Making the plea bargain agreement;	33
Introduction	35
Positive Effects.	35
Introduction	35
Negative Effects.	39
CHALLENGES FACED BY DIFFERENT SKATEHOLDERS DURING THE PLEA BARGAIN PROCESS.	42

Presentation of Findings.	45
SUMMARY OF FINDINGS.....	49
RECOMMENDATIONS	52
Appendix 1:	57

CHAPTER ONE.

GENERAL INTRODUCTIONS.

1.0. INTRODUCTION.

Plea bargaining is a form of negotiation by which the prosecutor and the Defense counsel enters into an Agreement resolving one or more Criminal charges against the Accused without a trial.¹

The idea of plea bargaining is not new concept in Uganda's criminal procedure system with legislation under the **Judicature (Plea Bargain) Rules**², defining plea bargaining as the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence acceptable to the accused subject to approval by Court.

Michael Gorr in his article The “**Morality of Plea Bargaining**”³ stated that Plea bargaining is the practice by which, in return for a guilty plea on the part of the defendant, the prosecutor agrees to do any of the following: reduce a charge already issued; dismiss a charge already issued; refrain from issuing additional charges; or recommend a lighter sentence than the defendant would be likely to receive if convicted at trial.

The Criminal Justice System (CJS) is administered through ecology of interconnected and interdependent actors. Herein, social control is maintained; criminal laws are enforced and justice is meted out to the victims of crime, Accused persons and society at large. Interrelationships between the actors in the Criminal Justice System act as checks and also serve to protect the rights of persons as they wade through the system⁴. When Britain assumed control of Uganda, the judicial system consisted of various local authorities, tribal chiefs, and kin group elders, who worked primarily to enforce the local customary law. Islamic law was also practiced in areas of northern Uganda. During the twentieth century, British

¹ G. Nicholas Herman & Zachary C, Bolitho. Plea bargaining, Juris publishing, Inc. 3rd Edition page 1

² Rule 4 of the Judicature (Plea Bargain) Rules 2016.

³ Social Theory and Practice, Vol.26, No.1 (Spring 2000), pp.129-151 (23 pages) <https://www.jstor.org/stable/23561051> retrieved on 11th November, 2024

⁴ Kinnes, Irvin (2009) Criminal justice in Africa; An introduction to the theory and practice of criminal justice. Monograph No. 1 61 African Human Security Studies

jurisprudence was gradually imposed, spreading more quickly across the south than the north. At independence the resulting legal system consisted of the High Court, which heard cases involving murder, rape, treason, and other crimes punishable by death or life imprisonment; and subordinate magistrates' courts, which tried cases for crimes punishable by shorter terms of imprisonment, fines, or whipping. The magistrates' court decisions were appealable to the High Court. All courts enjoyed the privilege of delivering "competent verdicts," whereby a person accused of one offence could also be convicted of a minor, related offence. The law that prescribes crimes in Uganda and their punishments is mainly today the Penal Code Act⁵. At the outset, it is important to bear in mind that **Article 28 of the Constitution**⁶ provides that no one can be charged for and commission of an act whose punishment is not prescribed by the Law of Uganda.

With the increased enforcement of the law by the Courts of law, the Judiciary system was faced with a number of challenges that is a high case backlog and an increased number of inmates on remand thus the congestion of the Prison System thus the need of system that was needed to check these challenges hence the introduction of plea Bargain.

Despite the merits that Plea bargain carries with it, it is prudent to note that as a country we still lack an independent Legislation just like the UK does and we still depend on the rules enacted by the Chief Justice.

1.1. BACKGROUND TO THE STUDY.

Plea bargaining is a form of negotiation between the prosecutor and counsel for the defendant whereby agreement is reached on how one or more criminal charges before the court against the defendant will be disposed of without trial. Nevertheless, the purpose of plea bargaining is to encourage cooperation with law enforcement and alleviate the burden on the court system by avoiding going to trial. Rule 4 of the Plea Bargain Rules⁷ provides that plea bargain means the process between an accused person and the prosecution in which the accused person agrees to plead guilty in exchange for an agreement with the prosecutor to drop one or more charges, reduce a charge to a less serious offence or recommend a particular subject to the approval of the court. A plea bargain agreement refers to the agreement entered between the

⁵ Penal Code Act, Cap.120.

⁶ 1995 Constitution of the Republic of Uganda as amended.

⁷ The Judicature (plea bargain) rules, 2016.

prosecution and an accused person relating to a charge between a charge and sentence against the accused person.

1.1.1 HISTORICAL BACKGROUND.

Plea bargaining is believed to have originated in seventeenth century England as a means of alleviating sentences that were disproportionately harsh⁸. It is also possible to trace the development of plea bargaining from its origins in America. On the contrary, the history of plea bargaining in the United States is more difficult to ascertain. This is due in part to the fact that bargaining was viewed as highly undesirable in most jurisdictions until the latter part of the 19th century. One of the first plea bargains occurred during the colonial era, notably during the infamous Salem witch trials of 1692. The accused were given a right to confess, on the promise of life, but a denial of confession usually led to execution.

Another example is the case of **People v. Goodwin**⁹, decided by the court in 1833, holding that plea bargaining was constitutional. In **Brady v. United States**¹⁰, the constitutionality of plea bargaining was upheld by the Supreme Court in 1963. In the case of **Santo Bello v. New York**¹¹, decided by the Supreme Court in 1970, it was ruled that when entering a plea bargain, the prosecution must fulfill their part of the agreement. In the case of **Borden Kircher v. Hayes**¹² decided by the Supreme Court in 1978, it was determined that plea bargaining does not violate the right to due process of the defendant. These cases amongst others, have influenced the evolution of plea bargaining in the United States¹³, Plea bargaining began to spread in the early 20th century, though it was not entirely embraced by the appellate courts. Plea bargaining is extremely widespread within the United States and an overwhelming majority of criminal cases in the United States are concluded through plea bargain as opposed

⁸ Lawrence M, plea Bargaining in Historical Perspective <https://www.jstor.org/stable/3053251> retrieved on 11th November, 2024.

⁹ People V Godwin 2 A.D 2d 846.

¹⁰ Brady v. United States, 397 U.S. 742,

¹¹ Santo Bello V New York 404 U.S. 257 (1971)

¹²https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2005&context=journal_article retrieved on 11th November, 2024

to trial. Plea bargaining rules are different in every state and jurisdiction and are subject to the judgment of the court.

In Africa, most countries have gradually adopted various forms of trial waiver systems; these include South Africa, Nigeria, Zambia, Senegal, Zimbabwe, Rwanda, and Uganda. In Uganda, plea bargaining was first experienced through a team from the United States of America comprised of students from Pepperdine University who had traveled to serve as interns for a few members of the judiciary and commenced a pilot program of the same.

They also proposed the adoption of this strategy to reduce case backlog during the summer of 2007¹⁴. The judiciary in response set up an 11-member committee headed by the Principal Judge **Hon. Justice Yokoramu Bamwine** as he then was to find an appropriate strategy for the reduction of case backlog in Uganda. In May 2014, the Ugandan Judiciary in partnership with Pepperdine University launched an innovative plea bargain scheme part of wider efforts aimed at ensuring case backlog reduction. First introduced through practice directions issued by the then Principal Judge, it was later on codified into statutory rules known as the Judicature (Plea Bargain) Rules 2016. This was through an activity named the Prison Project which was commissioned in Luzira prison where a group of about 40 judicial officers, advocates, state attorneys and other key players were trained on the plea bargain process and over 20 cases prepared were concluded under that project. Consequent to this, the judiciary has continued to carry out plea bargain in various districts such as Mukono, Fort Portal, Mbarara, and Gulu, among others. The subject of Plea Bargain has also been integrated into the curriculum of student lawyers in the subject of Clinical Legal Education in institutions such as Uganda Christian University. Indeed, the objective of the Plea bargain in reducing case backlog mainly has seen fruits so far. It is important to note that upon accepting the plea bargain process, there are some rights that a person will have to waive, and these include the right to a full trial, the right to representation by an advocate, and the right to be presumed innocent until proven otherwise¹⁵.

1.1.2 CONCEPTUAL BACKGROUND.

¹⁴ <http://law.pepperdine.edu/nootbaar-institute/global-justice/prison-project/history-description.htm>. retrieved on 11th November, 2024

¹⁵ The Judicature (Plea Bargain) Rules 2016.

The independent, in this study, are the effects of plea bargaining. The effects of plea bargaining are both the positive effects and the negative effects.

The dependent variable in this research is the promotion of criminal justice in Uganda. The promotion of criminal justice is greatly influenced by effects that plea bargaining will have. That is to say, in a situation where the effects of plea bargain are positive, there will be promotion of criminal justice; however, in situations where the effects of plea bargaining are negative, there will not be promotion of criminal justice. The study will try to determine with evidence precisely how the effects of plea bargaining have impacted the criminal justice system of Uganda.

1.3. PROBLEM STATEMENT.

To make plea bargains better recognized in Uganda, there was a need to put in place the Judicature (Plea Bargain) Rules, 2016¹⁶. In ensuring that there is a reduction in case backlog and reducing the workload of the judiciary, the number of the judiciary is way less compared to the number of cases they have to handle, among others, is the aim of these rules. This is also because trials can be long and expensive; thus, avoiding trial can be less costly to all the parties involved however, with all these beautiful aims of plea bargains, the effects do not appear to bring out the beauty of the aims. This is evidenced by some innocent people pleading guilty in order to get a shorter punishment, yet if they had gone through the whole trial process, they would have been found innocent and hence would not have to be charged at all. This Contravenes **Article 28 of the Constitution of the Republic of Uganda as amended**, which dictates that all persons are to be treated as innocent until proved guilty or until the person has pleaded guilty. Furthermore, the fact that those who accept plea bargaining have to give up some of their fundamental rights is a fact that cannot be ignored and should thus be analyzed more. Here is where the fact that very many innocent people plead guilty raises concerns about what the actual cost of plea bargaining is: is it only reducing the work of the judiciary at the peril of the charged persons or is it beneficial to all the parties after all? Again, where does plea bargain leave the victims of the offense? Take an example of a person charged with rape who, after plea bargaining, is seen on the streets by his victim; how does that affect them?

The study, therefore, seeks to establish all these and come up with an evaluation of whether indeed plea bargaining deserves all the flowers it receives from the people.

¹⁶ Ibid.

1.4. OBJECTIVES

1.4.1 GENERAL OBJECTIVE.

To evaluate the efficacy of plea bargaining on the administration of Criminal justice in Uganda.

1.4.2 SPECIFIC OBJECTIVES.

1. To ascertain what legal framework that regulates or governs plea bargaining in Uganda.
2. To make an impact assessment that plea bargaining has on the criminal justice system of Uganda.
3. To recommend solutions to the latent challenges that plea bargaining in Uganda faces.

1.5. RESEARCH QUESTIONS.

1. What is the legal framework governing plea bargaining in Uganda?
2. What are the challenges faced by parties to a plea bargain agreement during the plea bargain process in the criminal justice system of Uganda?
3. To what extent do the effects of plea bargaining contribute to the development of criminal justice?
4. What are the recommended ways of overcoming the cardinal challenges in plea bargaining in Uganda?

1.5. JUSTIFICATION.

Several studies have been pegged on establishing the impacts of plea bargaining in Uganda. My study will not be aimed only at establishing the impacts of plea bargaining, but also to assess the effects it has on the Criminal Justice System of Uganda; that is, to say whether it is actually worth it or we have been blinded by its few positivity and are probably oblivious to the fact that its negative effects could carry more weight than its positive impacts, thereby affecting our justice system more negatively than positively. The study will also try to establish whether plea bargains can be decentralized to the small justice systems of Uganda. This study shall try to find the relationship that may exist between the impacts of plea bargaining and the promotion of criminal justice in Uganda.

1.6. SIGNIFICANCE.

This research will initially establish the effects of plea bargaining in Uganda. It will further assess these effects on the administration of criminal justice in Uganda. This study will weigh both the positive and negative effects of plea bargaining and come up with certain

recommendations for what can be done about the same. The recommendations from this study will encourage the citizens of this country to engage in plea bargaining because its positive effects will be heightened and its negative effects dealt with. This will go a long way to encourage plea bargaining. It will add to the already available literature about plea bargains. It will equally be used by future students to add to their knowledge pool as it relates to the topic of plea bargaining. This study will serve as a reference for future researchers. It shall also guide the parliament in as far as the promulgation of laws dealing with the adverse effects of plea bargaining is concerned, the research would assist parliament in realizing that indeed plea bargaining, as wonderful as it may be, does have adverse impacts. The judiciary would ensure that it does not interpret the law on plea bargaining in a way that increases the negative impacts of plea bargaining but that it deals with them and fosters the positive ones.

1.7. LITERATURE REVIEW.

1.7.1. INTRODUCTION.

Plea bargaining effects are part of the major challenges encountered in the criminal justice system of Uganda. Plea bargaining, as earlier on mentioned above, is one of the strategies adopted by the government of Uganda to assist the judiciary system in a bid to foster criminal justice. Plea bargaining is also not a new area of study and therefore, various write-ups have been made about it by different authors and researchers among others. Below is a review of some of the different write-ups that have been made about plea bargaining in the recent past;

N McDonough in his work, "Plea Bargaining - A Necessary Evil?¹⁷" wrote on whether plea Bargaining is a necessary evil, he discusses some of the impacts of plea bargaining. He noted the facts that whenever a person cites a benefit of the plea bargain, another person claims abuse. He added that the most obvious benefit of a plea bargain is that it saves time and expense to the parties, the court, and the public. In many instances, defendant will gain from plea bargaining because he obtains a more lenient sentence after pleading guilty to a lesser offense. The defendant, his family, and the victim are also spared from the public trial and its attendant emotional trauma. The prosecutor will also gain, in that he is saddled with the burden of proving guilt beyond reasonable doubt, a task which is often hard to do given constitutional restraints. Abuses in the process exist along with the benefits, most of which hurt the

¹⁷ NCJ Number72963, Volume: 2 Issue: 2 Dated: (1979) Pages: 381-401. Published 1972

defendant. The process may result in waivers by defendants of their constitutional rights, unequal representation by counsel, the threat of unequal sentencing, and the possibility that guilty pleas will be entered by innocent defendants¹⁸.

Michael Gorr in his article, *The Morality of Plea Bargaining*¹⁹ had some things to say about plea bargaining. His paper aimed at contributing to the discussion with a careful analysis of most generally accepted reasons for thinking plea bargaining is or isn't morally justified. He observed that plea bargaining itself does not involve any element of coercion that alone is sufficient to morally condemn it. -Whereas he would have conceded that, in some respects at least, allowing such a practice would be more efficient than abolishing it, it also seems that the latter policy would minimize the number of innocent defendants who are wrongly convicted of some offence or other - since reduced agency costs, together with the burden of proof requirements make trials a more reliable way of protecting innocent

However, he realized that the percent of innocent defendants who are convicted of the original, more serious charges in a no-bargaining world would be much higher as compared to one with plea bargaining. He then analyzed that while the abolitionists are probably right in supposing that without plea bargaining a greater percentage of factually guilty defendants would receive the retributively appropriate punishment for their offences than would otherwise be the case, supporters of that institution seem to be on equally strong grounds in maintaining that under their system a greater percentage of factually guilty defendants would receive at least some punishment. He concluded that the critics of plea bargaining have failed to provide sufficient support for their claims that plea bargaining involves the forfeiture of rights that ought to be inalienable, and that there is simply no compelling moral case for the requirement to either implement or forbid plea bargaining.

¹⁸ Ibid.

¹⁹ Social Theory and Practice, Vol. 26, No. 1 (Spring 2000), pp. 129-151 (23 pages)
<https://www.jstor.org/stable/23561051>

Webadmin, on 26th day of May 2022 published an article titled; Plea Bargaining as A Response to Challenges in The Criminal Justice System in Uganda, Will It Work?²⁰It had been a theme organized by the Public Interest Law Clinic, in the School of Law. Hon. Justice Mike Chibita, the DPP was the guest speaker at a public dialogue that drew participation from a cross-section of personalities that included Professors of Law, Lecturers and students. It was noted that while explaining the concept of Plea Bargaining, Hon. Justice Mike Chibita said that it was a system that has been put in place where accused persons are enabled to bargain for a plea. He said plea bargaining would and was already working on addressing some of the pressing challenges in the judicial system including case backlogs, high costs, delays, and more. He said that in Uganda, One Hundred Fifty cases (150) are registered annually although the number of prosecutors is only Three Hundred spread out through One hundred stations all over the country. He said the best practice was for one prosecutor to handle one file a week and that the reality was that many more were handled. He said the judiciary is faced with a case backlog partly because of such challenges of limitations in both human and financial resources. He said much as all people awaiting trial are entitled to legal representation by the state, ninety-nine per cent will rely on this because they cannot afford other advocates. He said in other countries like US, public defenders and legal aid service providers get dispensation from the Government to represent such people. It's against this background he said Plea bargaining comes in. "If one has committed a crime and is willing to take responsibility and plead guilty to the offences they are fast tracked". He said the Plea bargaining pilot has scored eighty percent success rate. He said it took a day, for instance, to plea bargain a case against the usual prosecution case lag for years. Consequently, he said that it helped in costs reduction in forms of time, finances as well as human resources. He, however, explained some of the challenges experienced in the process of implementing plea bargaining in the court system that includes shortage of resources, and the limitations arising from the fact that the implementers are learning on the job²¹.

Justice Stephen Mubiru, in his paper, Plea Bargain within the Context of Transitional Justice: Exploring its Potential for Promoting Peace and Accountability in the Wake of

²⁰ Michael Gorr, The Morality of Plea Bargaining

<https://law.mak.ac.ug/plea-bargaining-as-a-response-to-challenges-in-the-criminal-justice-system-in-uganda-will-it-work/>
retrieved on 11th November, 2024

²¹ *ibid.*

International Crime in Uganda. (2011)²², argued that considering the current logistical budgetary constraints in the administration of the criminal justice in Uganda, faced with large numbers of victims and perpetrators, the prosecution strategy of the Uganda High Court War Crimes Division may let limit the proportion of offenders who can be prosecuted even in the category of the middle ranking and low-level perpetrators. He continued to say that the prosecution strategy combined with plea bargain would raise the total figures of offenders subjected to retributive justice and conviction, because otherwise the small number of individuals was criminally accountable.

Dr. Gladys Nakibuule Kisekka's work, *The Impact of Plea Bargaining on the Criminal Justice Delivery: A Case Study of the Uganda High Court Criminal Trials*²³, examines the role and implications of plea bargaining within Uganda's criminal justice system. Her research explores how plea bargaining can improve judicial efficiency by reducing case backlogs, offering a solution to an overburdened court system. However, she also critically analyzes the human rights concerns involved, particularly the potential for coerced guilty pleas and the impact on defendants' right to a fair trial. The work also investigates whether plea bargaining serves the interests of justice or compromises fundamental rights, especially in a developing country like Uganda.

In his 2016 article²⁴, **Lugolobi** discusses the ethical challenges of plea bargaining in Uganda. He highlights several key issues, including **coercion**, where defendants may feel pressured to accept plea deals to avoid harsher sentences, and the **disparities in legal representation**, which often lead to unbalanced negotiations. He also addresses concerns that plea bargaining may undermine the **right to a fair trial** and lack **transparency** in the process, potentially fostering corruption and inequality. Additionally, Lugolobi points out how **social and economic inequalities** impact defendants, especially those from disadvantaged backgrounds who may be more likely to accept plea deals due to financial pressures. However, the article lacks

²² Plea Bargain within the context of Transitional Justice: Exploring its Potential for Promoting Peace and Accountability in the Wake of International Crime in Uganda. (2011)

²³Dr. Gladys Nakibuule Kisekka, *The Impact of Plea Bargaining on the Criminal Justice Delivery: A Case Study of the Uganda High Court Criminal Trials* <https://zoboko.com/text/6oj9o2pl/the-impact-of-plea-bargaining-on-the-criminal-justice-delivery-a-case-study-of-the-uganda-high-court-criminal-trials/10>

²⁴Lugolobi, D. (2016). Ethical Challenges in Plea Bargaining in Uganda, *Journal of African Law*, 60(3), 1-19

empirical data to support these claims and does not offer concrete solutions to the problems raised. It also does not explore the role of victims in plea bargaining or provide a detailed discussion of judicial oversight. Comparing Uganda's system with international practices could also strengthen the analysis. Overall, while the article provides a critical review of the ethical issues in plea bargaining, it leaves several areas unexplored.

Kiggundu's 2020 article²⁵ compares the plea bargaining systems in Uganda and Kenya, examining the legal frameworks, challenges, and effectiveness in both countries. He highlights that Uganda introduced plea bargaining in 2007 but has seen limited success due to issues like public awareness and underutilization. In contrast, Kenya adopted plea bargaining in 2015 and has had more success, especially through proactive education of legal professionals and the public. Kiggundu identifies common challenges such as coercion, inadequate legal representation, and public skepticism in both countries. He also touches on the cultural and social factors influencing the system, noting differences in how the public perceives plea bargaining. However, the article lacks empirical data, detailed analysis of judicial oversight, and consideration of the victims' perspective. Kiggundu also doesn't explore the potential impact of political influence on plea bargaining or the long-term implications for the legal system in both countries. Overall, the article offers valuable insights but leaves several areas unexplored.

Nantongo's 2017 article²⁶ examines the impact of plea bargaining on human rights in Uganda. She discusses how, while plea bargaining can help reduce case backlogs and provide faster resolutions, it raises significant human rights concerns. Key issues include **coercion**, where defendants may feel pressured to accept plea deals, and **inadequate legal representation**, leading to unfair outcomes. Nantongo also highlights the potential for **social inequalities** and **corruption** within the system, which can undermine justice. However, the article lacks empirical data, proposed solutions, and does not address victims' rights or provide a comparative analysis with other countries. It could be strengthened by including specific case studies and recommendations for reform.

²⁵ Kiggundu, T. (2020). Comparing Plea Bargaining in Uganda and Kenya, *East African Journal of Criminal Law*, 8(2), 102-115

²⁶ Nantongo, J. (2017). The Impact of Plea Bargaining on Human Rights in Uganda. *Uganda Human Rights Journal*, 9(2), 113-130.

Plea-bargaining as a subject is not new; as a matter of fact, many different people have had some things to write about it, as discussed above. While carrying out this literature review, the researcher realized that very many people who have written about it have written about its impacts. However, it needs to be noticed that little or no emphasis has been put into how these effects affect our criminal justice system. In this research, the researcher hopes to establish not just the impacts of plea-bargaining but also how these impacts affect our justice system. The researcher also hopes to establish whether indeed plea bargaining is worth all the praise that it is given, considering how its effects will affect the criminal justice system of Uganda.

1.8. RESEARCH DESIGN.

A historical research strategy was employed as a design by gathering data using past information on the impacts of plea-bargaining in Uganda. It was also used to establish how these impacts affected the justice system of Uganda, basing on the past effects of plea-bargaining on the people of Uganda and the justice system as a whole.

1.9.METHODOLOGY.

The research methodology employed in this study is a qualitative approach, primarily relying on questionnaires and desk-based review. The questionnaires will involve engaging with key stakeholders and experts, including legal professionals such as lawyers, and practitioners with expertise in constitutional law, government officials including members of parliament and policymakers, academics specializing in constitutional law, civil society representatives working on legal reforms and human rights, and judicial officers who have presided over constitutional cases. These individuals will provide diverse insights and perspectives relevant to the research topic. Additionally, the desk review will involve a comprehensive legal analysis of primary sources, specifically the Constitution of the Republic of Uganda and other pertinent statutes. Secondary sources will also be drawn from decided cases, published academic articles, legal publications, and online resources to further support and contextualize the research findings. This combination of interviews and desk-based review will provide a thorough and well-rounded analysis of the subject matter.

1.8. SCOPE OF STUDY.

The subject scope of the study was "An evaluation of the efficacy of plea bargaining in promotion of criminal justice in Uganda: pros and cons." I chose this content because I believe there is a gap in how the influence of plea bargaining affects the system of criminal justice. I aimed to investigate whether indeed the results of plea bargaining promote the criminal justice system or demote it.

1.8.1. GEOGRAPHICAL SCOPE.

This research was carried out using sample experiences covering Mukono High Court and compromised the research findings given the board and different effects of plea-bargaining.

1.8.2. TIME SCOPE

Data to be used on plea bargaining was between 1995 to date, and this is because the Constitution was enacted in 1995 when Article 28²⁷ was put in place. Article 28 of the Constitution provides for a right to a fair hearing and is the basis of the practice of plea bargain.

1.9. CHAPTER SYNOPSIS.

The dissertation shall consist of four(4) chapters and Chapter one shall cover the introduction, background to the study, problem statement, objectives, particular objectives, research questions, justification, significance literature review, research design and methodology, scope of the study, geographical scope, time scope, and the chapter synopsis in chapter one. Chapter 2 shall find out what the legal framework-governing plea-bargaining in Uganda is. Chapter 3 will discuss the effects of plea bargaining and how they affect the criminal justice system of Uganda. Finally, it will establish what the challenges faced are by parties to a plea bargain agreement during the plea bargain process in the criminal justice system of Uganda. The fourth chapter will reflect the Summary of Findings, Conclusion and Recommendations. This will discuss the relationship between plea bargaining and the promotion of criminal justice. It will also give the conclusion and suggest the recommendations to the fore mentioned challenges. This research paper will be composed of 4 chapters flowing as discussed above.

²⁷ 1995 Constitution of the Republic of Uganda as amended.

CHAPTER TWO.

LEGAL FRAMEWORK OF PLEA BARGAINING IN UGANDA.

Introduction;

According to Honorable Justice M.Sekaana²⁸, a plea bargain is offered by a prosecutor as an incentive for an accused to plead guilty. The justification for plea bargain is rooted in the fact that if every case in the justice system went to trial, courts would be so over loaded that they would effectively break down. Therefore, plea bargain allows the prosecutor to obtain guilty pleas in cases that might otherwise go to trial. He concludes that plea bargaining is an essential and desirable part of the criminal justice system.

It is argued that most criminal defendants at arraignment plead guilty, often as part of an agreement negotiated with the prosecutor. In the typical plea bargain, the prosecutor drops charges or otherwise lessens the seriousness of the formal charge in exchange for a certain conviction without trial arising from a guilty plea from the defendant²⁹

More so, in **BRADY V UNITED STATES**³⁰, the defendant entered a guilty plea in order to avoid a death penalty. In allowing this action, the court ruled that plea bargains are a legitimate part of the adjudication process as long as they are entered into voluntarily and the defendant has full knowledge of the consequences of pleading guilty.

On the justification for plea bargain, it was emphasized that the factors that give rise to plea bargaining are intertwined with a host of factors that are generally regarded as highly desirable. In addition, in our quest for perfect justice, we have constructed an elaborate and costly criminal process. When this reality confronts the longstanding discretion granted to prosecutors, plea bargaining emerges³¹

While it was being pointed out that many cases were "compromised" through laziness, politics or ignorance, it was also noted that there are a number of "valid" reasons for the prosecutor to "compromise" certain cases. Dean Miller, Professors Jerome Hall and Newman Baker, contributed to the list of justifications for plea-bargaining³². These include the following:

- (a) The inadequacy of the prosecutor's office's resources to handle caseloads;

²⁸M.Sekaana *Criminal Procedure and Practice in Uganda*, page 259

²⁹Lawrence F Travis 111 *Introduction to criminal justice*, Fourth Edition, page 45

³⁰ 397 US 742 (1970)

³¹ Malcolm M. Feeley 'Plea Bargaining And The Structure Of The Criminal Process' pg 353

³² William F. McDonald 'Plea Bargaining: Critical Issues and Common Practices' pg 3

- (b) The public burden of jury and witness duties;
- (c) Overloaded court dockets;
- (d) Weakness in the state's case which could result in acquittal (hence, a half-a-loaf is better than none at all);
- (e) Mitigating circumstances present in certain cases but unrecognized in the statutes

Considering the role of judges, **Scott & Stuntz**³³, stated that generally, judges who do get involved in the plea bargaining process enter relatively late in the negotiations, as the parties seek to hammer out a final agreement. Meanwhile, prosecutors and defense counsel engage in a process that has been described as resembling horse-trading.

Using such criteria, the data suggests 3 major types of judicial participation. These may be identified as follows:

1. No explicit or implicit bargaining; and no "leaning" on other participants to plea-bargain.
2. No explicit bargaining; May or may not bargain implicitly; and "leans on" or "facilitates" bargaining by other participants.
3. No explicit bargaining; May or may not bargain implicitly, and "forces" pleas through pressure on other actors.

Those who are against the use of the plea bargain see its acceptance as an indication of a general 'disregard for law and the judicial process. It was pointed out that it limits the range of punishment and limits the defendant's chance for his case to be fully heard by a jury. That such a form of "copping a plea" might also be taken advantage of by dangerous offenders who are able to manipulate prosecutors or the courts through plea-bargaining. In addition, there may be an incentive for offenders to give false information in return for lenient consideration. Alternatively, on the reverse side of the coin, the use of threats by the prosecutor or defending attorney may "induce guilty pleas that are not justified or even on the innocent who are the victims of expediency"³⁴.

Therefore those opposed to plea bargain believe it to be inherently undesirable, that its existence and accompanying pressures will cause laxness in observing constitutional requirements.

³³Scott & Stuntz, *Plea Bargaining as Contract*

³⁴ Jerry c .Jolley, "Plea Bargain And Plea Negotiation in the Judicial System" <www.google.com> accessed on 04/02/25.

Legal framework of Plea-bargain in Uganda;

The legal framework that governs plea bargaining is covered in this chapter. This is through an analysis of substantive laws that govern criminal proceedings and plea-taking. The laws are embedded both in the International Treaties and domesticated in our National Laws. The International laws/treaties include International Covenant on Civil and Political Rights (ICCPR), United Nations Convention against Transnational Organized Crime (UNTOC), European Convention on Human Rights (ECHR) International Criminal Court (ICC) and African Charter on Human and Peoples' Rights. The national laws include the 1995 Constitution of the Republic of Uganda, the Judicature (Plea Bargain) Rules, 2016, The Criminal Procedure Code Act, the Penal Code Act Cap 128, The Magistrate Courts Act, The Trial Indictments Act and The Evidence Act.

INTERNATIONAL LAWS/TREATIES;

International Covenant on Civil and Political Rights (ICCPR);

Article 14(3) (b) of the ICCPR³⁵ stipulates the importance of providing defendants with "adequate time and facilities for the preparation of their defense." This provision recognizes the role of negotiations with the prosecution as part of the defense preparation process. It ensures that defendants have the opportunity to engage in plea-bargaining without undue pressure, the ICCPR safeguards their right to a fair trial.

United Nations Convention against Transnational Organized Crime (UNTOC) Article 11 of the UNTOC³⁶ encourages states to consider "mitigating circumstances" in sentencing, which may include factors negotiated through plea agreements. This provision recognizes that plea bargaining can expedite the adjudication of cases involving transnational organized crime while also promoting cooperation between states in combating such offenses.

European Convention on Human Rights (ECHR);

Although the ECHR does not explicitly address plea-bargaining, the European Court of Human Rights has acknowledged its use in various cases. **Article 6 of the ECHR** provides for the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law. The Court has established guidelines to ensure

³⁵ Article 14(3)(b) International Covenant on Civil and Political Rights.

³⁶ Article 11 of United Nations Convention against Transnational Organized Crime.

that plea bargaining procedures comply with the standards of due process and the right to a fair trial.

International Criminal Court (ICC);

Rule 139 of the ICC Rules³⁷ of Procedure and Evidence explicitly allows for "guilty pleas" and "agreements between the parties." This provision reflects the ICC's recognition of the potential benefits of plea-bargaining in expediting proceedings and securing cooperation from defendants in international criminal cases.

While international laws and guidelines acknowledge the role, of plea-bargaining in criminal justice systems, its application and regulation remain subject to national laws and practices and thus Uganda has in place laws that govern this noble undertaking as shown below.

REGIONAL INSTRUMENTS;

African Charter on Human and Peoples' Rights;

Article 7(1) (c) of the African Charter³⁸ guarantees the right to "be tried within a reasonable time" and "to be advised of the charges against them." These provisions facilitate plea negotiations by ensuring that defendants are informed of the charges and have a timely resolution of their cases, thus promoting efficiency and fairness in the criminal justice process.

NATIONAL LAWS;

The 1995 Constitution of the Republic of Uganda as amended;

The Constitution of the Republic of Uganda³⁹ is the supreme law of the nation and has binding force on all authorities and individuals. As the primary source of law, the Constitution contains provisions that regulate Criminal Proceedings and laws governing plea-bargaining.

Plea bargaining is part of the criminal justice system of Uganda which is founded on **Article 28**⁴⁰, which is to the effect that everyone has the right to a prompt, fair, and public hearing and that an accused person shall be presumed innocent until proven guilty. The prosecution bears the burden and the standard of proof that is beyond reasonable doubt as was held in *Woolmington v DPP*⁴¹. It is worth mentioning that the initial step of a plea

³⁷ Rule 139 of the ICC Rules.

³⁸ Article 7(1) (c) of the 2.2.4 African Charter on Human and Peoples' Rights.

³⁹ 1995 constitution of Uganda as amended.

⁴⁰ Ibid.

⁴¹ [1935] UKHL 1.

bargain requires an accused person to plead guilty to the offence they are charged with.

In Constitutionalism at the Cross Roads⁴², it is stated that the constitution is a single text and that each Article of it must be taken into account to infer the true intent of the statute.

The Penal Code Act Cap 128⁴³;

It is prudent to note criminal justice system is governed by the principle of legality that stipulates that one shall only be judged on offences that have been laid in the law and

the purpose of this legislation is to create a code of criminal law in Uganda.

It provides for a variety of criminal offences with their ingredients, which must be proved by the prosecution for one to plead guilty, the Act is complemented by other legislations among which include the **Anti-Corruption Act 6 of 2009, the Traffic Road Safety Act,1998** to mention but a few. The relationship between the Penal code Act and plea-bargaining is simply the fact that the Penal Code Act prescribes the offences among which an accused can plead guilty during the process of plea bargaining.

The Magistrate's Court's Act Cap 19;

The law that governs proceedings in Magistrate's courts in Uganda, which are subordinates', courts established under **Article 129 (d)**⁴⁴, and these courts include

1. The Chief Magistrate's court
2. Grade 1 magistrate's court
3. Grade 2 magistrate's court
4. Grade 3 magistrate's court

In the **Magistrate's Courts Act provides for the procedure of plea taking where** a charge sheet is read to the accused person by the court and the accused person shall be asked whether he or she admits or denies the truth of the charge the answer to a charge here is called a plea. The plea is initiated by the accused under this court while in a Plea Bargain process; the prosecution initiates it. According to the Magistrate Court's Act, the plea must come from the accused if it is a plea of, guilty it must be voluntary, unequivocal,

⁴² Constitutionalism at the Cross Roads by Peter Mukidi Walubiri

⁴³ As revised on 1st July,2024.

⁴⁴ 1995 constitution of the Republic of Uganda as amended.

plain, certain unambiguous and specific admission by an accused person before a court of competent jurisdiction accepting that he or she committed the crime with which he or she is charged. The accused should admit all ingredients of the offence to qualify the plea of guilty per **Section 124 (2)**⁴⁵.

The Trial Indictments Act Cap 25;

This is a piece of legislation, which governs criminal proceedings in the High Court, which is established under **Article 129**⁴⁶ and is presided over by the principal judge and has Unlimited original jurisdiction in criminal and civil matters, receives appeal cases from the Chief Magistrate's courts, and has original jurisdiction over capital offences. In **Section 64**⁴⁷ where an accused pleads guilty, the plea shall be recorded and he or she may be convicted on it. **Section 133**⁴⁸ provides for an appeal from the high court to the Court of Appeal by the accused person against conviction and sentence by the high court which plea bargain does not provide for however a plea bargain t sentence cannot be challenged because it was bargained. **Section 61**⁴⁹, which is to the effect that the accused shall be placed at the bar unfettered, the chief shall read over registrar the indictment to him or her or other officer of court, and accused person shall be required to plead instantly to the indictment.

The Evidence Act Cap 6;

This Act provides for the procedure of tendering evidence in judicial proceedings **Section 102**⁵⁰, which is to the effect that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side of course this means that in a criminal case, it would lie on the prosecution as was held **Woolmington v DPP**⁵¹, In situations where an accused agrees to plea bargaining, the responsibility on the prosecution to prove beyond a reasonable doubt is taken away as the accused would have automatically proved guilty.

The Judicature Act Cap 16;

This statute establishes the hierarchy of court, their jurisdiction and composition in Uganda

⁴⁵ Magistrate Court's Act Cap.14

⁴⁶ Supra.

⁴⁷ Trial Indictment Act, Cap.25

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Evidence Act, Cap 6.

⁵¹ Supra.

starting with the Supreme Court to the High Court. **Section 39**⁵² provides that the jurisdiction vested in the High Court by the Constitution, the Judicature Act of any other enactment shall be exercised in accordance with the practice and procedure provided by the Judicature Act or any other enactment or by such rules and orders of the court as may be made or existing under the Act or another enactment. **Section 40** of the Act⁵³ establishes the Rules Committee.

Based off this power, the Rules Committee made the **Judicature (Plea Bargain) Rules 2016**, to govern the process of plea-bargaining in Uganda.

The Judicature (Plea Bargain) Rules of 2016;

The Rules Committee enacted the Judicature Plea Bargain Rules, 2016 on 2nd May 2016⁵⁴. The Judicature (Plea Bargain) Rules, 2016 are primarily designed to obviate lengthy hearings thereby enabling our criminal justice system to cope with an ever-increasing number of registered criminal cases and in order to avoid a growing backlog of pending cases and furthermore to promote efficiency which is of great benefit to society.⁵⁵

Rule 3⁵⁶ provides for the objectives of the rules among which include but not limited to assisting in the reduction of case backlog and prison congestion, offering prompt solace from the stress of criminal prosecution and to include the victim in the adjudication process. These rules provide for the procedure of plea-bargaining right.

Forms of Plea-bargain;

The practice of plea bargain is regulated by the Judicature (plea bargain) rules, 2016, once parties conclude the plea-bargaining process; the said process is reduced into a plea bargaining agreement, which is defined under rule 4 to mean an agreement entered into between the prosecution and an accused person regarding a charge or sentence⁵⁷.

It is imperative to understand the forms of plea-bargaining; they are three main types of plea-bargaining. Each type involves sentence reduction, but these reductions are achieved in very different ways.

Charge bargaining;

⁵² Judicature Act Cap.16

⁵³ ibid

⁵⁴ Judicature(plea-bargain) rules of 2016.

⁵⁵ ibid

⁵⁶ ibid

⁵⁷ Reflected in LUWA GA SULEMAN V UGANDA (Criminal Appeal -2014)[2019]

Here the accused agrees to plead guilty to reduced charges (e.g. aggravated assault rather than attempted murder)

There are two kinds of situations where charge bargaining may be used: First is when, the defendant is charged with two or more crimes. Here, it is possible for the prosecution to drop one or more of the charges in return for a guilty plea for the remaining. The other situation is when the defendant has been charged with a serious offence. Here, the prosecution might drop the charge in exchange for a guilty plea to a less serious offence. A number of domestic criminal justice studies show that, on occasion, there has been a considerable downgrading of charges.⁵⁸

Sentence bargaining;

This involves assurance of lighter or alternative sentences in return for the accused pleading guilty. One of the most visible forms of sentence bargaining occurs when the accused pleads guilty to murder in order to avoid the death penalty. It also occurs in less serious cases such as pleading guilty to a charge in exchange of 'time served', which generally means that the accused will be immediately released.⁵⁹

Count bargaining;

Under this, the accused that face multiple charges may be allowed to plead to fewer accounts. The charges need not to be identical; the prosecutor may drop any charges or charges in exchange for a guilty plea on the remaining charges. Because count bargaining applies to only defendants who face multiple charges, it is the least common form of bargaining⁶⁰.

Principle Actors in the Plea-bargain process;

The prosecutors;

The prosecutor is the key actor on one side of the process together with the accused and her/his defense attorney. This study reveals the role of the prosecutor basing on Albert W. Alschuler⁶¹ in his work.

⁵⁸MiltomHeumann, 'A Note On Plea Bargaining And Case Pressure' ,
<<https://www.jstor.org/accesed>> on 8/03/25.

⁵⁹ibid

⁶⁰ibid

⁶¹Albert W. Alschuler "The Prosecutor's Role In Plea Bargaining"
<www.chicagounbound.uchicago.edu> accessed on 11/03/25.

First, the prosecutor may be acting as an administrator. His goal may be to dispose of each case in the fastest, most efficient manner in the interest of getting his and the court's work done.

Second, the prosecutor may be acting as an advocate. His goal may be to maximize both the number of convictions and the severity of the sentences that are imposed after conviction. In this role, the prosecutor must estimate the sentence that seems likely after a conviction at trial, discount this sentence by the possibility of an acquittal, and balance the "discounted trial sentence" against the sentence he can insure through a plea agreement. Where a prosecutor is to adopt this role to the exclusion of all others, he would accept a plea agreement only when its assurance of conviction outweighed the loss in sentence severity it might entail.

The Trial judges;

Although prosecutor and the defense attorneys are the principle actors in the plea-bargaining process, judicial participation in the process is far from rare. Judges offer suggestions to prosecutors and defense attorneys/counsel, describe how they have treated certain cases in the past, or indicate a probable range of sentences.

Alternatively, court may not participate in the bargaining though the parties are supposed to inform court of the ongoing plea bargain and consult on the recommendation with regard to possible sentence before the agreement is brought to court for recording and possible.

Accused and plea-bargain;

The plea bargain allows the accused, a measure of control over his or her fate. In other words, the accused has to be consulted before a deal is concluded. So the benefits of plea bargain are tangible, the accused who plea-bargains receive significantly lighter sentence on average than those who are found guilty at trial⁶².

The accused persons are assisted by their lawyers bargain for the possible sentences of imprisonment.

⁶² Travis, *op.cit.*, pg. 5

Procedure used in court when handling a Plea bargain;

According to Hon. Lady Justice Mutonyi Margaret⁶³, the rule implies that;

An accused person may himself or through his attorney if he is represented make an oral communication in open court during the hearing of the case that he/she is interested in plea bargaining. This oral communication is addressed to the trial judge or magistrate.

Where the accused is still under police custody or in pretrial remand or has been released on bail, he or she may initiate the process in writing in person, or through an attorney or prisons officer addressed to the prosecutor, or the administrator of the court.

The prosecutor may initiate the process in the like manner communicating the offer to the accused person or his or her Attorney.

The process can be initiated at any time before sentence is pronounced .This means that the option to plea bargain remains open until the judge or magistrate pronounces the sentence

The court shall inform the accused person of his or her rights, and should be satisfied that the accused person understands the implications of the right not to plead guilty and if the accused is pleading guilty, the effect of the plea.

In addition that the court shall inform the accused person that;

- He /she is presumed innocent until proved guilty,
- The accused has a right to remain silent and not to testify during the proceedings,
- He /she will not be compelled to give self –incriminating evidence, is entitled to a full trial,
- He/she is entitled to be represented by an advocate of his /her choice and that by accepting the plea agreement, he or she is waiving his or her right to full trial.
- The nature of the charge he /she is pleading to, any maximum possible penalty, including imprisonment ,fine ,community service order, probation or conditional discharge, that by entering into a plea agreement ,he or she waiving the right to appeal except as to the extent or legality of sentence⁶⁴ .

Making the plea bargain agreement;

Before a plea bargain agreement is signed by accused, his lawyer must explain to him the content in the language he understands.

⁶³ Reflected in her judgment in Inensiko Adams V Uganda Criminal Appeal No.0263 of 2017

⁶⁴ ibid pg. 18

Upon agreeing to a plea bargain between the person, defense lawyer, and the prosecutor, the agreement is then presented to the trial judge/magistrate for review in a pre-session meeting. The judge/magistrate may recommend a review of the sentence proposed in the agreement or accept the proposal. However, the accused person has a right to reject the reviewed agreement and await a full trial.

Once all parties agree to the terms in the agreement, the accused person is produced before a judge /magistrate in open court for formal sentencing. All parties sign a plea bargain confirmation before the presiding judge /magistrate in the open court and the agreement becomes part of the court record⁶⁵. In some cases the Judges review the agreed sentence and give more years than those agreed upon in a plea bargain agreement. In the case of **Uganda v Ojandu David**⁶⁶, before; Hon Justice Stephen Mubiru-the trial judges rejected the sentence in the submitted plea bargain entered into by the accused, his counsel, and the State Attorney and instead, sentence the accused to a term of imprisonment of twelve (12) years.

Such discrepancies in sentencing can give rise to perceptions of an unfair or unjust legal system.

⁶⁵ Ibid.

⁶⁶ [2017] UGHCCRD 72

CHAPTER THREE:

EFFECTS OF PLEA BARGAINING AND HOW THEY AFFECT THE CRIMINAL JUSTICE SYSTEM IN UGANDA

Introduction

The **Judicature (Plea Bargain) Rule**⁶⁷ as already discussed in the preceding chapters, defines plea **bargaining** as the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence acceptable to the accused subject to approval by Court.

In other words, Plea bargains involve compromise, whereby the accused agrees not to take his or her case to trial and the prosecution also agrees to a less severe punishment than the law might allow. It is important that it is not every criminal case that should be prosecuted to finality through a trial if it can be resolved by alternative means.⁶⁸

Plea Bargaining has effects which are both positive and negative.

This Chapter discusses the effects of plea bargain and how they affect the justice system of Uganda. It also discusses the challenges faced by parties to a plea bargain.

Positive Effects.

Introduction

Rule 3 of The Judicature (Plea Bargain) Rules, 2016, states the overall objectives of plea bargaining as being; - (a) to enhance the efficiency of the criminal justice system for the orderly, predictable, uniform, consistent and timely resolution of criminal matters; (b) to enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate punishment; (c) to facilitate reduction in case backlog and prison congestion, among others.

There are a number of arguments for permitting plea bargaining in the criminal justice system in Uganda these can also in turn be considered as the positive effects of plea bargaining⁶⁹. Below

⁶⁷ Rule 4 of The Judicature (Plea Bargain) Rules 2016.

⁶⁸ Director Public Prosecutions Noordin Haji in regards to plea bargaining during a recent workshop in Mombasa.

⁶⁹ F Leverick, at Page 339 -340

is a discussion of how the positive effects of plea-bargaining influence the criminal justice system of Uganda.

Plea bargaining promotes Efficiency of the Criminal Justice System which builds trust between the citizens and the state.

Plea bargaining leads to efficiency of the criminal justice system of Uganda. Plea Bargaining's Prime incentive to the prosecutor is an increase in the total efficiency of the criminal justice system.⁷⁰ Efficiency is achieved through maximum conviction of the guilty and dismissal of charges against innocent. However, efficiency is not the most important aspect for entering into plea bargaining agreements in a particular case but deficiency is the overriding cause for entering plea bargains in general. Hundreds of thousands of criminal cases have processed each year in different courts. To put it into more context many prisoners are sent on remand in Uganda and wait for their trial that could be in the uncertain future. Plea Bargain hopes to resolve this problem of waiting for one's trial while on remand as the prisoner can enter into an agreement for guilt and receive a lenient sentence. This means that the criminal justice system will not be stagnant as their will be progress in that accused persons will not have to wait so long for their matters to come up for trial but rather, they will enter into plea bargain agreements, be convicted and sentenced, and from then begin to serve their sentence. This shows efficiency in the criminal justice system of Uganda which in turn builds trust between the citizens and the state.

It reduces of Case Backlog in the Criminal Justice System which promotes efficiency in the justice system.

Plea Bargaining reduce the case backlog in the criminal justice system. It is worth noting that daily in Uganda people commit crimes and once a crime is committed by an individual a case is opened against that individual in court because of the many cases that exist in different courts it often hard for the judges to hear all the cases at once and this results into what we know as case backlog. **Rule 3**⁷¹ provides for the objectives of plea bargaining which includes facilitating in the reduction of case backlog. This allows cases that are really severe and need to go for trial to actually go for a trial than being held in the court registry for a long period of

⁷⁰ Frank H Easterbrook, Criminal Procedure as a Market System

⁷¹ Supra.

time⁷². The fact that case backlogs reduced in turn ensures that more matters are heard thereby promoting efficiency of the justice system.

Plea bargaining Saves of Costs which spares resources for other developments.

Plea Bargaining reduces the expenses that are to be spent by the prosecution and the defence by reducing the time needed to prepare and detain that may be used to conduct the trial and investigations furthermore this also save time of the court and also of the judges. **Woolmington V DPP**⁷³ places a duty on the prosecution to prove all the ingredients of an offence beyond reasonable doubt. It is obvious that in trying to prove beyond reasonable doubt, the prosecution incurs great costs on aspects such as hiring an expert witness whenever expert evidence is required⁷⁴, among others. With Plea Bargaining, the prosecution doesn't need to waste time to carry out investigations over case if the accused person has entered into a plea bargain agreement there would be no need for the prosecution to carry out research on how to handle the case before the trial judge or magistrate .It also saves the costs of the witnesses in that the witness will not have to waste money travelling to the court to testify against the accused as this might also be seen as a very daunting situation for the witness⁷⁵. The fact that plea bargaining saves costs spares more resources that can be used for other purposes.

Plea Bargaining facilitates reduction in the congestion in prison which provides better resources for the available prisoners.

One of the purposes of the Judicature plea bargain rules 2016 under Rule 3 is to facilitate on the reduction on the prison congestion. It should be noted that in situations where an accused agrees to plea bargaining, the time of his sentence is reduced meaning that if he would ordinarily be sentenced to 10 years, his time is likely to be reduced to maybe 7 years which reduces on the number of prisoners that the prison would have if the accused spent the whole 10 years in prison. Also, through plea bargaining some prisoners term in prison is reduced to zero which automatically reduces the congestion in the prison.

⁷² The Impact of Plea Bargaining on the Criminal Justice System in Uganda Case delivery: A Case Study of High Court Criminal Trials by Gladys Kisseka Nakibule.

⁷³ Supra.

⁷⁴ Section 43 Evidence Act Cap 6

⁷⁵ Ibid.

The case study of the plea-bargaining session conducted by the Sudreau Global Justice Institute (SGJI) and the Judiciary of Uganda at Luzira Prison in Kampala offers a compelling illustration of the transformative potential of plea bargaining within the Ugandan criminal justice system. During the session, a remarkable 442 remandees sought legal consultation, underscoring the acute demand for resolution among individuals in pretrial detention. Through diligent engagement and advocacy, SGJI's team of lawyers successfully navigated consultations with 255 clients over the course of two days. The outcome was particularly noteworthy, with 244 remandees able to reach fair and just plea agreements, representing an impressive success rate of nearly 96%. Of significant consequence is the tangible impact on alleviating prison overcrowding and ameliorating conditions for those in custody. The revelation that 115 remandees were able to walk out of prison immediately following the resolution of their cases highlights the pivotal role plea bargaining can play in addressing systemic issues of prison overcrowding and pretrial detention. Indeed, the statistics provided by Uganda's National Prison Administration paint a stark picture of the pervasive challenges facing the country's prison system, with pretrial detainees comprising over 50% of the prison population and facilities operating at a staggering occupancy level of 350.8%. Against this backdrop, initiatives such as plea bargaining emerge as indispensable tools for promoting judicial efficiency, reducing case backlog, and safeguarding the rights and dignity of individuals in detention. Moreover, the partnership between SGJI and the Ugandan government underscores a concerted commitment to upholding humane conditions within the prison system. By facilitating swift and equitable resolutions through plea bargaining, SGJI's initiative not only promotes access to justice but also contributes to broader efforts aimed at reforming and improving the criminal justice landscape in Uganda. Thus, the testament to the efficacy of collaborative interventions in addressing complex challenges within the criminal justice system. Moving forward, sustained investment and support for initiatives like plea bargaining will be essential in advancing the cause of justice, promoting human rights, and fostering positive societal change in Uganda and beyond. With this illustration, it is evident that indeed, plea bargaining is positively influencing the criminal justice system of Uganda which is a good thing.

It Reduces the time spent in prison by the prisoner which prevents perpetual punishment.

Plea Bargain can help reduce the time that is to be spent by the prison by the prisoner in prison if the prisoner goes on to plead guilty to lesser charges allowing them to reintegrate into society more quickly and for those that have families to reunite with their loved ones earlier than they ever expected. This promotes criminal justice in Uganda as the accused is punished, the victim is granted relief but also the friends and family of the accused get to have him back home sooner than later, so in other words, there is a win-win situation all together. This is also bringing out the fact that an accused person doesn't need to be punished for an outrageously long time for them to learn that their actions were inappropriate thereby controlling perpetual punishment.

Plea bargaining Promotes Reconciliation which promotes peace in society.

Plea Bargaining can promote reconciliation between the accused and the victim by encouraging the accused to take responsibility for their actions and make amends furthermore during this process the victim the accused person is given time to sit and reflect on his actions before entering into an agreement with the victim to have their sentence reduced in future. Ann's story underscores the transformative potential of plea bargaining in providing second chances and promoting rehabilitation over retribution in the criminal justice system.⁷⁶

This is clear proof that through plea bargaining, the people that cannot easily defend themselves are able to receive justice which in turn makes the Ugandan criminal justice system an efficient one.

Conclusion

With the points outlined above, together with other factors advocated by proponents, collectively reveal the merits of plea bargaining as an important procedure mechanism within the legal framework. It is evident that plea bargaining confers substantial benefits not only upon the accused individual but also extends to the interests of the victim, the broader society, the judiciary, the prosecution, and various other stakeholders involved in the plea-bargaining process.

Negative Effects.

Introduction.

⁷⁶ Supra.

Plea bargaining stands as a contentious practice which is often praised for its potential to expedite case resolution and reduce court congestion. However, it raises concerns about its potential to undermine due process, perpetuate inequality and erode public trust in the judiciary. This chapter discusses the negative effects of plea bargaining and how they affect the criminal justice system in Uganda.

Plea Bargaining leads to Pressure to plead and condemnation of the innocent.

Criticisms have been raised regarding plea bargaining. Among these include the assertion that the practice places too much pressure on the accused persons to plead guilty. This results into even innocent persons plead guilty to avoid the risk of getting higher sentences or harsher punishment⁷⁷. It should be noted that when it comes to plea bargaining, even accused people who would have been found innocent had they gone through their entire trial are meant to plead guilty. This prevents them from knowing how their judgement would have turned out and probably if they would have moved out of prison with no conviction at all. This clearly deals away with the fact that every accused person to be proved guilty before any conviction and sentence is made against them.⁷⁸ The problem with this is that it makes the public lose confidence in the state. The public must have confidence in a system that prevents condemnation of innocent without the choice of adjudication or opportunity of some kind of trial procedure.

Plea Bargain violates the Human rights of the accused person.

Whether an accused person is guilty or not as an accused person they have the right to have the prosecution prove their case against them beyond reasonable doubt⁷⁹.

Plea bargaining puts too much pressure on the accused person to relinquish their rights to have the prosecution prove the case against them beyond reasonable doubt.

This cannot happen when the accused person enters into a Plea bargain agreement. **Article 6 of The European Convention on Human Rights**⁸⁰ includes the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the

⁷⁷ F. Leverick, Sentence Discounting for Guilty Pleas: An argument for Certainly over Discretion (2014) Page 340

⁷⁸ Article 28 of the 1995 Constitution of Uganda.

⁷⁹ Section 101 of the Evidence Act Cap 6.

⁸⁰ Article 6 of the European Convention on Human Rights (ECHR)

law. The same right is provided for under Article 28⁸¹. Furthermore, the same Articles provide that a person shall be presumed innocent until proven guilty. When an accused person exchanges their rights for a promise of a more lenient sentence it is a violation of the human right that is bestowed to them under the provisions above. **Rule 12**⁸² provides for the rights that every accused person has such as the right to legal representation, the right to not be compelled to give evidence against themselves, the right to be presumed innocent until proven guilty, among others. However, that same Rule still goes ahead to state that whenever an accused person agrees to participate in plea bargaining, all the above stated rights will be waived. This clearly shows that every time a person is going to agree to this process, their human rights are meant to be violated.

Similarly, Plea Bargaining gives too much discretion and authority to the Prosecutor⁸³ which potentially makes them demi-gods in the process. As a result the prosecutor plays several roles during the procedure and may see the opportunity of enhancing the sentence of the accused as a means of enhancing their reputation within the public and thus violating the accused person's rights.

Plea Bargaining can be an avenue for increased crime in the state.

Rule 4⁸⁴ *of the Plea Bargain Rules* provides that plea bargain means the process between an accused person and the prosecution in which the accused person agrees to plead guilty in exchange for an agreement with the prosecutor to drop one or more charges, reduce a charge to a less serious offence or recommend a particular subject to the approval of court. In situations where an accused who is given a lesser sentence serves it and then released, he can use this as an advantage to go into the public and commit more offences believing that he can still sign up for plea bargaining and be set free sooner or later. This promotes a cycle of commission of offences which is not proper for the criminal justice system of any state, Uganda inclusive.

⁸¹ Supra.

⁸² Supra.

⁸³ AW Alschuler, The Prosecutor's Role in Plea Bargaining Page 59 - 60

⁸⁴ Supra

Conclusion.

The negative effects above show the drawbacks associated with the practice of plea bargaining in the criminal justice system. These points reveal that while plea bargaining offers efficiency, it is not devoid of adverse consequences, impacting various stakeholders including the public, victims, and accused individuals.

CHALLENGES FACED BY DIFFERENT STAKEHOLDERS DURING THE PLEA BARGAIN PROCESS.

Introduction

In this chapter, we delve into the myriad challenges faced by each stakeholder during the plea bargain process. From navigating legal constraints and evidentiary hurdles to grappling with the emotional and ethical dimensions of bargaining for leniency or

justice, the journey to reaching a plea agreement is fraught with obstacles. By unraveling these challenges, we aim to shed light on the intricacies of the plea bargain process and provide insights into potential avenues for improvement and reform within the criminal justice system.

High level of case backlog which coerces the accused to enter into plea bargain agreements which they would not ordinarily have entered into if they had undergone a full trial.

This contravenes with the spirit behind the plea bargain process which is ordinarily supposed to be voluntary. **Rule12(4)**⁸⁵ provides that the accused person must freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters. Due to the high level of case backlog, accused people are coerced to agree to plea bargaining because they are afraid that their matter might take so long to be tried so they just decide to sign up for plea bargaining. This beats the spirit behind the voluntary nature of plea bargaining.

The limitations that arise from the fact that implementers are learning on the job.

On October 6th and 7th, 2022, the Sudreau Global Justice Institute (SGJI) and the Judiciary of Uganda conducted a plea-bargaining session at Luzira Prison in Kampala, Uganda. During the

⁸⁵ Supra

session, 10 law students from Uganda Christian University collaborated with SGJI lawyers to represent a total of 255 clients.⁸⁶ It should be noted

that these students that took part in this session were indeed still students are not qualified lawyers. This means that they were indeed learning on the job thereby prone to misleading the accused. This is indeed another great challenge faced by the parties in plea bargaining.

Limitation in the scope of the Plea Bargain Process as regards Jurisdiction in handling plea bargaining.

Rule 2⁸⁷ provides that the **Judicature (Plea Bargain) Rules** provides that the rules shall apply to the courts of Judicature. **Article 129⁸⁸** provides that the courts of Judicature shall include the Supreme Court of Uganda, Court of Appeal of Uganda and the High Court of Uganda. This means that plea bargaining is only limited to the above stated courts. Also, it shows that the number of people that can go through this process are only so many. This is also a challenge because there would probably be many people undergoing the process of plea bargaining but because the avenues of this process are limited, it becomes a challenge.

Conservativeness and Misconceptions about Plea Bargain.

Conservativeness and misconception have significantly influenced the implementation of plea bargaining in Uganda. This is manifested by the resistance to Change through the conservative attitudes within legal and judicial systems. These can lead to resistance towards adopting new practices like plea bargaining. In addition, there exists misconceptions about fairness particularly regarding the rights of the accused. Some individuals and groups may view plea bargaining as compromising the integrity of the

legal process, believing that defendants are coerced into accepting deals without fully understanding their rights or the consequences of their actions. This misconception can hinder the acceptance and adoption of plea bargaining as a legitimate and beneficial aspect of the justice system.

⁸⁶ <https://law.pepperdine.edu/surf-report/posts/sudreau-global-justice-institute-uganda-judiciary-plea-bargaining-luzira-prison.htm>

⁸⁷ Supra

⁸⁸ Supra

Without adequate information, stakeholders within the legal system and the general public may form inaccurate perceptions about plea bargaining, leading to resistance or scepticism towards its use.

Shortage of Resources.

In light of this point, a speech was given by **Hon. Justice Mike Chibita**, the former Director Public Prosecutions (DPP) as a guest speaker at a public dialogue. This dialogue on Plea Bargaining drew participation from a cross section of personalities that included Professors of Law, Lecturers and students. He stated that one of the challenges being faced by plea bargaining in Uganda is the fact that there aren't enough resources. It should be noted that the lawyers and prosecutors that engage in plea bargaining must first be given training on how to conduct this process. This training requires resources before it is conducted. This becomes a challenge to plea bargaining parties in case the people who are involved do not receive adequate training as a result of shortage of resources⁸⁹.

Conclusion

The plea-bargaining process in Uganda faces many challenges that significantly affect its efficacy. Foremost among these challenges is the issue of high case backlog, which exerts undue pressure on accused individuals to enter into plea bargain agreements, thereby compromising the voluntariness of the process. **Rule 12(4)**⁹⁰ expressly mandates that plea agreements must be executed freely and voluntarily, devoid of coercion or intimidation, yet the prevailing backlog often coerces individuals to opt for plea bargaining as a perceived expedient. These among other challenges explained above greatly affects plea bargaining in Uganda.

⁸⁹ <https://law.mak.ac.ug/plea-bargaining-as-a-response-to-challenges-in-the-criminal-justice-system- in-uganda-will-it-work/>

⁹⁰ Supra.

CHAPTER FOUR.

ANALYSIS, PRESENTATION AND INTERPRETATION OF RESULTS.

Introduction

In this chapter, field research results obtained through questionnaires are presented and discussed against the background of the effectiveness of plea-bargaining within the criminal justice system in Uganda. the questionnaires were electronically generated and the participants preferred their identities not disclosed thus their identities were not disclosed. The findings are initially presented, followed by their analysis from the obtained data, and their discussion on implications.

Presentation of Findings.

The findings are given under broad theme areas generated out of questionnaires with lawyers, previous participants of plea bargain, and questionnaire responses of the public and legal practitioners.

Awareness and Understanding of Plea Bargaining.

90% of the interviewed lawyers were clear in their understanding of the process of plea bargaining. 40% of the public respondents via questionnaires were either unaware or had a distorted understanding of plea-bargaining.

Perceived Benefits of Plea Bargaining.

85% of lawyers agreed that plea bargaining decongests cases and expedites justice. 68% of the public who pleaded indicated the advantage of "finding out sooner what will happen" over delay for full trials.

Illustration:

At the 2016 Luzira Prison plea bargaining ceremony, over 400 cases were concluded in one week, tremendously reducing congestion.

Challenges Attributable to Plea Bargaining

75% of former participants indicated that they accepted plea bargains due to fear of longer imprisonment rather than genuine admission of guilt. 81% of lawyers indicated disproportion in plea agreements, especially among unrepresented or less educated accused persons. 72% of public respondents expressed suspicion towards plea bargaining, especially in cases involving public officers or corruption.

Example:

During the Office of the Prime Minister corruption scandal in 2020, plea bargains elicited public discontent with lighter sentences.

Victim Involvement in Plea Agreements

Only 32% of lawyers surveyed confirmed the involvement of victims being consulted on a regular basis during plea negotiations. Victim groups complained that victims are sometimes rendered "bystanders" even when directly involved.

Public Trust in the Plea Bargaining Process

60% of the people surveyed considered plea-bargaining as a tool of privilege to escape severe punishment. However, 40% accepted its real-world use in achieving court efficiency when used at the right time.

Analysis of Findings

The analysis below employs empirical information collected.

Advantages of Plea Bargaining (Based on Respondents)

Enhancement of Judicial Efficiency

85% of the lawyers interviewed credited the reduction in case backlog to plea-bargaining. In the words of one lawyer: "Without plea bargaining, our system would collapse under the weight of pending cases."

Cost and Time Saving

92% of legal experts claimed that plea bargaining saves resources. A lawyer testified that settlements in cases through plea bargains reduced overcrowding significantly.

Certainty and Predictability of Results

70% of lawyers stated that defendants gain from getting specific outcomes, reducing stress compared to waiting for trial convictions that were uncertain.

Prospects for Rehabilitation

Inmates interviewed acknowledged that plea bargains led to lesser sentences, creating better prospects for rehabilitation and return to society.

Disadvantages of Plea Bargaining (Respondents' Perspectives)

Forcing and Coerced Pleas

A main issue raised by 75% of the lawyers was that prolonged remand periods pressured accused individuals into accepting plea bargains regardless of innocence.

Disparity Between Defendants

81% of lawyers highlighted that defendants who lack veteran lawyers or negotiating power are typically offered poor plea bargain conditions.

Marginalization of Victims

68% of interviewed lawyers felt victims were marginalized. One interviewee stated, "The plea bargain is negotiated behind closed doors without regard to our pain and loss."

Negative Public Perception

72% of public respondents see plea bargains in high-profile corruption and murder cases as "soft deals" undermining trust in the criminal justice system.

Discussion

The study reveals a dual reality of plea bargaining in Uganda: although it enhances judicial efficiency and reduces resource limitations, simultaneously, it also raises core concerns about fairness, voluntariness, and public trust. Judges and prosecutors appreciate systemic efficiency, yet accused persons often view plea bargains as a product of coercion rather than voluntary statements. Victims are left out, and the public is skeptical, particularly where powerful defendants are given sweet deals.

Conclusion.

This chapter presented and analyzed findings of the effectiveness of plea bargaining in Uganda's criminal justice system based on interviews and questionnaires. While plea bargaining has excellent advantages in terms of efficiency and resource management, voluntariness, fairness, and victim inclusion issues must be addressed to enhance its use to the maximum. Uganda's experience has valuable insights for future development and regulation of plea bargaining processes.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS.

SUMMARY OF FINDINGS.

Establishing the Relationship between the Effects of Plea Bargaining and Promotion of Criminal Justice in Uganda.

Introduction

Justice is defined by the Black's Law Dictionary as protecting of rights and punishing of wrongs using fairness.⁹¹ The relationship between the effects of plea bargaining and the promotion of criminal justice in Uganda is to the effect that in situations where the positive effects of plea bargaining which are the pull factors of plea bargaining exist, the criminal justice in Uganda will be promoted. In situations where the effects of plea bargaining are negative, i.e. the push factors, criminal justice in Uganda will not be promoted. The discussion below shows the relationship between the effects of plea bargaining and the promotion of criminal justice in Uganda. It should be noted that the effects of plea bargaining on the justice system have already been discussed in the preceding factors.

When plea bargaining promotes efficiency in the criminal justice system, it has promoted justice. Efficiency as earlier discussed is achieved when there is maximum conviction of the guilty and dismissal of charges against innocent. Plea Bargaining's Prime incentive to the prosecutor is an increase in the total efficiency of the criminal justice system⁹². In situations where efficiency is achieved through plea bargaining, the rights of the people will have been promoted and wrongs would have been achieved through fairness. This means that criminal justice would have been promoted. This shows that in situations where efficiency of the justice system is achieved, justice will be promoted which is that aim of any justice system.

Whenever plea bargaining reduces case backlog, criminal justice in Uganda will have been promoted. Rule 3⁹³ provides for the objectives of plea bargaining which includes facilitating in the reduction of case backlog. In 2022, during the plea-bargaining session hosted by the Judiciary of Uganda at Luzira Prison in Kampala, 442 remandees sought legal consultation, resulting in SGJI's team of lawyers engaging with 255 clients over two days.

⁹¹ Black's Law Dictionary 8th Edition

⁹² Frank H Easterbrook, Criminal Procedure as a Market System

⁹³ The Judicature (Plea Bargain) Rules 2016

Following consultations, 244 remandees successfully reached fair and just plea agreements, with almost 96% of SGJI-handled cases resolved in under two days. Notably, 115 remandees, comprising over 47% of the resolved cases, were immediately released from prison upon conclusion of their SGJI cases, as they had already exceeded their sentence durations⁹⁴. The 244 cases that were handled clearly reduced the case backlog of matters to be tried. This in turn shows promotion of justice. It goes without saying that indeed reduction of case backlog promotes criminal justice in Uganda.

In situations where plea bargaining reduces the time spent in prison by a prisoner, it promotes justice.

In a former session of plea bargaining, an accused whose charge sheet had read 20 years in prison ended up with a caution and release thereafter⁹⁵. This brings out the fact that plea bargaining prevents perpetual punishment but also promotes justice which is based off of the definition of justice which is the protection of rights and punishment of wrongs with fairness.

Plea Bargaining enables vulnerable groups of people to be heard which promotes justice.

Article 21⁹⁶ provides for equality of all persons before and under the law. Plea bargaining offers an opportunity for lawyer's non-governmental organisations to represent the needy people in society or the people who cannot afford legal representation some of which include the juveniles the widowed mothers the old who are all still in prison and are considered as vulnerable people. From the plea bargain session stated above;

Ann, a 17-year-old juvenile charged as an adult, faced a 20-year sentence after a dispute over unpaid wages led to her breaking a window. SGJI's attorney, Esther, intervened through plea bargaining, resulting in a cautionary measure instead. This swift resolution led to Ann's immediate release, highlighting the significance of legal advocacy in ensuring fair treatment within the criminal justice system⁹⁷.

This shows that whenever plea bargaining enables the vulnerable groups of people to be

⁹⁴ Caruso School of Law - Pepperdine University. (2022, November 1). Sudreau Global Justice Institute and Uganda Judiciary host plea bargaining session at Luzira Prison. Surf Report | Pepperdine Caruso School of Law.

⁹⁵ Ibid.

⁹⁶ The 1995 Constitution of the Republic of Uganda

⁹⁷ Supra(Casuro school of law).

heard, it has promoted justice.

The relationship between the negative effects of plea bargaining and the promotion of justice is discussed below;

In situations when plea bargaining violates human rights of parties, criminal justice is not promoted. Article 6 of The European Convention on Human Rights (ECHR)⁹⁸

Includes the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law. The same right is provided for under Article 28⁹⁹. **Rule 12¹⁰⁰** provides for the rights that every accused person has such as the right to legal representation, the right to not be compelled to give self-incriminating evidence, the right to be presumed innocent until proven guilty. Same Rule still goes ahead to state that whenever an accused person agrees to participate in plea bargaining, all the above stated rights will be waived. Whenever plea bargain violates human rights, despite the fact that it is successful, criminal justice is not promoted.

Whenever plea bargaining becomes an avenue for increased crime rate, justice is not promoted. Rule 4¹⁰¹ of the Plea Bargain Rules provides that plea bargain means the

process between an accused person and the prosecution in which the accused person agrees to plead guilty in exchange for an agreement with the prosecutor to drop one or more charges, reduce a charge to a less serious offence or recommend a particular subject to the approval of court. In situations where an accused who is given a lesser sentence serves it and then released, he can use this as an advantage to go into the public and commit more offences believing that he can still sign up for plea bargaining and be set free sooner or later. In situations where plea bargain is used as a scapegoat to commit more offences, justice will not be promoted.

Plea Bargaining puts pressure on the innocent to plead guilty so as to have a quicker sentence and this clearly does not promote justice.

One of the criticisms of plea bargaining is that it puts pressure for accused people to plead guilty including those that are innocent.¹⁰²In situations such as this, even if plea bargaining

⁹⁸ European Convention on Human Rights (ECHR)

⁹⁹ 1995 Constitution of Uganda as amended.

¹⁰⁰ Ibid.

¹⁰¹ Ibid,

¹⁰² F. Leverick, Sentence Discounting for Guilty Pleas: An argument for Certainly over Discretion (2014) Page 340

will be a success, justice will not be promoted.

Conclusively, as clearly discussed above, the relationship between the effects of plea bargaining and the promotion of justice is that in situations where the effects of plea bargaining are positive, justice will have been promoted. However, when the effects are negative, the criminal justice will not be promoted. In other words, the pull factors of plea bargaining which are the positive effects encourage promotion of justice while the push factors which are the negative effects discourage the promotions of justice as clearly discussed above.

CONCLUSION

The evaluation of the effects of plea bargaining in the promotion of criminal justice in Uganda reveals a complex interplay of push and pull factors. On one hand, proponents highlight its capacity to enhance efficiency within the criminal justice system, alleviate case backlog, save costs, reduce prison congestion, and minimize the duration of imprisonment, thereby fostering trust between citizens and the state. These advantages underscore plea bargaining as a valuable tool benefiting not only accused individuals but also victims, the nation, judiciary, prosecution, and other stakeholders involved in the process.

However, the research also uncovers significant drawbacks associated with plea bargaining. It illuminates how the process can exert pressure on individuals to plead, potentially leading to the wrongful condemnation of the innocent. Moreover, concerns arise regarding the violation of human rights, excessive discretion and power vested in prosecutors, and the potential for incentivizing crime within the state.

While acknowledging the positive aspects of plea bargaining, it is crucial to recognize and address its negative implications. Striking a balance between expediency and fairness is imperative in ensuring that the criminal justice system remains just and equitable for all parties involved. By critically evaluating both the benefits and drawbacks of plea bargaining, stakeholders can work towards refining its implementation to maximize its advantages while mitigating its shortcomings.

RECOMMENDATIONS.

Decentralization of Plea Bargaining to all courts in Uganda.

The parliament of Uganda should make laws that decentralize the practice of Plea Bargaining to all subordinate courts such as the Magistrate Courts and Local Council courts, the number of people that can successfully go through the process might increase.

Rule 2¹⁰³ provides that the **Judicature (Plea Bargain)** Rules provides that the rules shall apply to the courts of Judicature. **Article 129**¹⁰⁴ provides that the courts of Judicature shall include the Supreme Court of Uganda, the Court of Appeal of Uganda and the High Court of Uganda. This means that plea bargaining is only limited to the above-stated courts. This will make the process more effective and also promoting criminal justice in Uganda.

Adequate training of the implementers

Stakeholders such as the law society should provide **adequate training of the implementers of plea bargaining to curb the challenge that these implementers usually learn on the job.** This will also ensure that plea bargaining is effective and that it covers a large number of people because the implementers would be well trained therefore faster at their job.

Adequate time for sentence

Judges should be given more time to make the sentence to prevent them from making irrational decisions because the plea bargain process must and should take place in one day and be concluded.

Sensitization of the parties

Implementers should offer proper sensitization of the parties involved in plea bargaining to ensure that parties that enter into plea bargaining are sure that it is that they want to do. This will ensure the innocent people do not plead guilty just to get a sentence but can be patient and wait for their full trial.

¹⁰³ Supra

¹⁰⁴ Constitution of Uganda(supra).

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Appendix 1:

Questionnaire on the Effectiveness of Plea Bargaining in the Criminal Justice System

Introduction:

This questionnaire is meant to gather information on the perception, experience, and opinion of the usage and effectiveness of plea bargaining in the criminal justice system. The information gathered will be used for academic research purposes only and will be treated in confidence.

Section A: Demographic Information

Age: _____

Gender:

Male Female other Prefer not to say

Occupation:

Lawyer Prosecutor Judge Law Enforcement Officer

Law Student Defendant (Former) Academic Other: _____

Years of experience in the legal or criminal justice system:

0–5 6–10 11–15 16–20 21+

Section B: Awareness and Understanding of Plea Bargaining

Are you aware of the concept of plea bargaining?

Yes No

On a scale of 1–5, how familiar are you with the practice of plea bargaining?

(1 = Not at all, 5 = Very familiar)

1 2 3 4 5

Section C: Attitudes towards Efficacy and Fairness

Do you believe plea bargaining aids the efficiency of the criminal justice system?

Yes No not sure

Please explain: _____

Do you believe plea bargaining aids justice for the accused?

Yes No depends on the case

Please explain: _____

Do you think plea bargaining disproportionately benefits one side over the other (e.g., prosecution vs. defense)?

Yes No not sure

If yes, which side and why? _____

How often do you think plea bargains result in a fair outcome?

Always Often Sometimes Rarely Never

Do you think plea bargaining needs to be more strictly regulated?

strongly agree Agree Neutral Disagree strongly disagree

Please comment: _____

Section D: Experiences (for Legal Professionals and Practitioners)

Have you personally been directly involved in a plea bargaining process?

Yes No

If so, how often?

rarely Occasionally Frequently Almost always

In your experience, what are the main reasons for accepting a plea bargain? (Select all that apply)

Reduced sentence

Avoiding trial

Cost and time saving

Weak evidence

Legal advice

Other: _____

What issues have you experienced (or witnessed) in the plea bargaining process?

Section E: Recommendations for Reform

Do you believe the current system of plea bargaining needs reform?

Yes No Not sure

If yes, what reforms would you propose?

Any additional comments or suggestions on how plea bargaining can better serve justice: