

STATUTORY INSTRUMENTS SUPPLEMENT  
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STATUTORY INSTRUMENTS

2016 No. 43.

THE JUDICATURE (PLEA BARGAIN) RULES, 2016

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2016 No. 43.

**The Judicature (Plea Bargain) Rules, 2016.**

*(Under section 41(1) and 41(2)(e) of the Judicature Act, Cap.13)*

IN EXERCISE of the powers conferred upon the Rules Committee by section 41(1) and 41(2)(e) of the Judicature Act, these Rules are made this 2nd day of May, 2016.

PART I—PRELIMINARY

**1. Title.**

These Rules may be cited as the Judicature (Plea Bargain) Rules, 2016.

**2. Application.**

These Rules apply to all the courts of judicature.

**3. Objectives.**

The objectives of these Rules are—

- (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;
- (d) to provide quick relief from the anxiety of criminal prosecution;
- (e) to encourage accused persons to own up to their criminal responsibility; and
- (f) to involve the victim in the adjudication process.

#### **4. Interpretation.**

In these Rules, unless the context otherwise requires—

“court” means a court of judicature established by or under the authority of the Constitution;

“minor and cognate offence” means a lesser offence that is related to the greater offence and shares several of the elements of the greater offence and is of the same class or category;

“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 by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by court; and

“plea bargain agreement” means an agreement entered into between the prosecution and an accused person regarding a charge or sentence against an accused person.

### **PART II—PLEA BARGAIN**

#### **5. Initiation of plea bargain.**

A plea bargain may be initiated orally or in writing by the accused or the prosecution at any stage of the proceedings, before sentence is passed.

#### **6. Scope of plea bargain.**

(1) A plea bargain may be in respect of—

(a) a promise to plead guilty to a charge in exchange for a recommendation for a lesser sentence;

(b) a promise to cooperate as a witness for the prosecution in exchange for reduced charges or a reduced sentence, or both; or

(c) a plea of guilty to—

(i) a minor and cognate offence;

- (ii) a lesser offence; or
- (iii) some charges or counts in exchange for a withdrawal of one or more charges or counts, in case of multiple charges.

(2) Where there is more than one accused person, a plea bargain may be entered into in respect of any one of the accused persons and the subsequent plea agreement shall apply and be binding only on the accused person who entered into the agreement.

#### **7. Disclosure.**

(1) The prosecution shall, in the interest of justice, disclose to the accused all relevant information, documents or other matters obtained during investigations to enable the accused to make an informed decision with regard to plea bargain.

(2) Disclosure under sub rule (1) shall not compromise State security, security of witnesses or the integrity of judicial process.

#### **8. Court participation in plea bargain.**

(1) The court may participate in plea bargain discussions.

(2) The parties shall inform court of the ongoing plea bargain negotiations and shall consult the court on its recommendations with regard to possible sentence before the agreement is brought to court for approval and recording.

(3) Subject to sub rule (1), a judicial officer who has participated in a failed plea bargain negotiation may not preside over a trial in relation to the same case.

### **PART III—PLEA BARGAIN AGREEMENT**

#### **9. Form of plea bargain agreement.**

(1) Where the parties are voluntarily in agreement, a plea bargain agreement shall be executed as prescribed in the Form set out in the Schedule I and filed in court.

(2) Subject to sub rule (1), where the plea bargain agreement involves a child, the agreement shall be executed by either the parent, guardian, probation and social welfare officer or the legal representative of the child.

**10. Plea bargain agreement to be explained to accused person.**

A plea bargain agreement shall, before being signed by the accused, be explained to the accused person by his or her advocate or a justice of the peace in a language that the accused understands and if the accused person has negotiated with the prosecution through an interpreter, the interpreter shall certify to the effect that the interpretation was accurately done during the negotiations and execution in respect of the contents of the agreement.

**11. Interests of victim, complainant and community to be taken into consideration.**

The prosecution shall, before entering into a plea bargain agreement, take into consideration the interests of the victim, complainant and the community and shall have due regard to—

- (a) the nature of and the circumstances relating to the commission of the offence;
- (b) the criminal record of the accused if any;
- (c) the loss or damage suffered by the victim or complainant as a result of the offence;
- (d) the interests of the community; and
- (e) any other relevant information.

**12. Recording of plea bargain agreement by the court.**

(1) Subject to the procedure prescribed in the Schedule 2, the court shall inform the accused person of his or her rights, and shall satisfy itself that the accused person understands the following—

(2) Subject to sub rule (1), where the plea bargain agreement involves a child, the agreement shall be executed by either the parent, guardian, probation and social welfare officer or the legal representative of the child.

**10. Plea bargain agreement to be explained to accused person.**

A plea bargain agreement shall, before being signed by the accused, be explained to the accused person by his or her advocate or a justice of the peace in a language that the accused understands and if the accused person has negotiated with the prosecution through an interpreter, the interpreter shall certify to the effect that the interpretation was accurately done during the negotiations and execution in respect of the contents of the agreement.

**11. Interests of victim, complainant and community to be taken into consideration.**

The prosecution shall, before entering into a plea bargain agreement, take into consideration the interests of the victim, complainant and the community and shall have due regard to—

- (a) the nature of and the circumstances relating to the commission of the offence;
- (b) the criminal record of the accused if any;
- (c) the loss or damage suffered by the victim or complainant as a result of the offence;
- (d) the interests of the community; and
- (e) any other relevant information.

**12. Recording of plea bargain agreement by the court.**

(1) Subject to the procedure prescribed in the Schedule 2, the court shall inform the accused person of his or her rights, and shall satisfy itself that the accused person understands the following—

- (a) the right —
- (i) to plead not guilty, or having already so pleaded, the effect of that plea;
  - (ii) to be presumed innocent until proved guilty;
  - (iii) to remain silent and not to testify during the proceedings;
  - (iv) not to be compelled to give self-incriminating evidence;
  - (v) to a full trial; and
  - (vi) to be represented by an advocate of his or her choice at his or her expense or in a case triable by the High Court, to legal representation at the expense of the State;
- (b) that by accepting the plea agreement, he or she is waiving his or her right as provided for under paragraph (a);
- (c) the nature of the charge he or she is pleading to;
- (d) any maximum possible penalty, including imprisonment, fines, community service order, probation or conditional discharge;
- (e) any applicable forfeiture;
- (f) the court's authority to order compensation and restitution or both; and
- (g) that by entering into a plea agreement, he or she is waiving the right to appeal except as to the legality or severity of sentence or if the judge sentences the accused outside the agreement.

(2) The charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea.



(3) The prosecution shall lay before the court the factual basis contained in the plea bargain agreement and the court shall determine whether there exists a basis for the agreement.

(4) The accused person shall freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters.

(5) A Plea Bargain Confirmation shall be signed by the parties before the presiding Judicial officer in the Form set out in the Schedule 3 and shall become part of the court record and shall be binding on the prosecution and the accused.

### **13. Rejection of plea bargain agreement by court.**

(1) The court may reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice.

(2) Where the court rejects a plea bargain agreement—

(a) it shall record the reasons for the rejection and inform the parties;

(b) the agreement shall become void and shall be inadmissible in subsequent trial proceedings or in any trial relating to the same facts; and

(c) the matter shall be referred for trial, subject to sub rule 8(3).

## **PART IV—WITHDRAWAL AND PROTECTION OF PLEA BARGAIN**

### **14. Withdrawal from plea bargain agreement.**

Either party may, at any stage of the proceedings before the court passes sentence, withdraw a plea bargain agreement.

### **15. Protection of plea bargain process.**

(1) Any statement made by an accused person or his or her advocate during plea bargain discussions is not admissible for any other purpose beyond the resolution of the case through a plea bargain.

(2) The court shall not impose a sentence more severe than the maximum sentence recommended in the plea bargain agreement.

(3) Where the court is of the opinion that a particular case is deserving of a more severe sentence than that recommended in a plea bargain agreement, the court shall reject the plea bargain agreement.

### **Cross References**

The Constitution (Sentencing Guidelines for Courts of Judicature)  
(Practice) Directions, 2013

The Evidence Act, Cap.6

The International Criminal Court Act, 2010, Act No. 11 of 2010

The Judicature Act, Cap. 13

The Magistrates Courts Act, Cap. 16

The Trial on Indictments Act, Cap.23

BART MAGUNDA KATUREEBE,  
*Chief Justice,*  
*Chairperson, Rules Committee.*

## PLEA BARGAIN AGREEMENT

## THE REPUBLIC OF UGANDA

IN THE ..... COURT OF UGANDA AT .....

UGANDA

VERSUS

.....

.....Case No .....

*Fill this form if you wish to plead guilty or do not contest the charges against you.*

*Initial the box for each applicable item only if you understand and agree with it and sign where the form provides "ACCUSED'S SIGNATURE".*

*If you have any questions about anything on this form or about your case, ask your advocate or the judge.*

**RIGHT TO ADVOCATE AND WAIVER (WHERE APPLICABLE)**

I understand that I have a right to be represented by an advocate of my choice throughout the proceedings. I further understand that if I cannot afford an advocate, the court will appoint one to represent me at no cost to me. I hereby waive and give up my right to be represented by an advocate of my choice.

**CONSTITUTIONAL RIGHTS**

I understand that I have the following Constitutional rights;

- (a) The right to plead not guilty.
- (b) The right to be presumed innocent until proved guilty or until I plead guilty.

- (c) The right to remain silent.
- (d) The right not to be compelled to give self-incriminating evidence.
- (e) The right to full trial.
- (f) The right to be represented by an advocate of my choice at my expense but in case I cannot afford an advocate, the Court will assign me an advocate on state brief.

### WAIVER OF CONSTITUTIONAL RIGHTS

I hereby waive and give up, for all of the charges against me, my right to a full trial, my right to cross-examine witnesses, my right against self-incrimination and my right to produce evidence and to put up a defense, including my right to testify on my own behalf.

The following agreement is undertaken by the prosecution or other authorised officer and the accused person or the accused person's advocate on the accused's behalf. The parties have agreed to a mutual satisfactory disposition, as herein stated subject to the approval of the court.

### PLEA BARGAIN AGREEMENT

Offence(s) charged in indictment:

.....

Amended offence (s) charged: .....

#### 1.0 Biographical information on accused person

1.1 Names: .....

1.2 Sex: .....

1.3 Marital status: .....

1.4 Age: .....

1.5 Place of birth: .....

1.6 Educational history: .....

1.7 Employment history, if any: .....

- 1.8 Employment history of family members, if any:  
.....
- 1.9 Place of residence/household description on date of arrest (who lived in same home, etc):  
.....
- 2.0 Case Information**
- 2.1 Date of arrest:  
.....
- 2.2 Date of preferring charge:  
.....
- 2.3 Offence(s) charged:  
.....
- 2.4 Date of admission in prison:  
.....
- 2.5 Date of committal:  
.....
- 2.6 Date of grant of bail, if any:  
.....
- 2.7 Description of prior arrests/convictions, if any:  
.....
- 2.8 Medical history prior and after detention:  
.....  
.....
- 3.0 Summary of the case/agreed facts (between prosecutions and the defence)**  
.....  
.....  
.....
- 4.0 Relevant Information**
- 4.1 Aggravating factors, if any:  
.....  
.....  
.....

4.2 Mitigating factors, if any:

.....  
.....  
.....

4.3. Post-release information: If released, where would the accused go and what would he or she do?

.....  
.....

4.4. Any additional relevant information:

.....  
.....  
.....

### PLEA OF ACCUSED PERSON

I hereby freely and voluntarily plead .....to the charges(s) above and agree to be sentenced to within the range of ..... and that:

(a) Prior to entering this plea, I have had a full opportunity to discuss with my advocate the facts of my case, the elements of the charged offence(s) any defences that I may have, my Constitutional rights and waiver of those rights, and the consequences of my plea.

(b) I offer my plea of guilty freely and voluntarily and with full understanding of all the matters set forth in the charges and in this form and that no one has made any threats, used any force against me, my family, or loved ones, or made any promises to me except as set out in this form, in order to convince me to plead guilty.

(c) I stipulate and agree that there is a factual basis for my plea(s) and admission(s)

(d) I am not under the influence of any substance, or suffering from any medical condition, that is or may be impairing my ability to enter into this plea agreement.

(e) I understand that a plea of guilty will not be a bar to liability in any civil lawsuit.

(f) I have no further questions of the court or of counsel with regard to my plea (s) and admission(s) in this case.

.....  
*Name and signature of accused person*

Date .....

#### STATEMENT OF ADVOCATE

I am the advocate for the accused person. I have reviewed this form with my client. I have explained each of the accused's rights to him/her and answered all of his or her questions with regard to those rights and this plea. I have also discussed the facts of the case with the accused, and explained the nature and elements of each charge, any possible defenses to the charges, the effect of any special allegations and enhancements, and the consequences of the plea.

I concur in the plea and any related admission and join in the waiver of the accused's constitutional and statutory rights and I hereby stipulate that there is a factual basis for the plea. I have explained to the accused that, to the best of my knowledge and information, the prosecution has provided me with all information and evidence that might play a significant role in his or her defence, or exculpate the accused and I know of no reason why the accused should not plead to this charge.

.....  
*Name and signature of accused person's advocate*

Date.....

## STATEMENT OF PROSECUTING AGENT

I am the representative of the prosecuting institution and have reviewed this form with the accused person's advocate. I have explained to the advocate and answered all of his or her questions with regard to this plea. I have also discussed the facts of the case with the advocate and explained the nature and elements of each charge and any possible defenses to the charges.

I have as far as prudent, provided all information and evidence that might play a significant role in the event of a full trial and the advocate knows of no reason why the accused should not plead to this/these charge(s).

.....  
*Name and signature of the prosecuting agent*

Date: .....



**STATEMENT OF COURT INTERPRETER / TRANSLATOR (WHERE APPLICABLE)**

I,..... having been duly sworn or having a written oath on file, certify that I truly Interpreted/translated this form to the accused person in the ..... language (*specify*) and the accused stated that he or she understood the contents of the form, and then initialed and signed the form.

.....  
*Name and signature of court interpreter/translator*

Date: .....

**FINDINGS AND ORDER OF COURT**

The court, having reviewed this form and any addenda, and having questioned the accused concerning the accused's constitutional rights, finds that the accused has expressly, knowingly, understandingly, and intelligently waived and given up his or her constitutional and statutory rights. The court finds that the accused's plea(s) and admission(s) are freely and voluntarily made with an understanding of the nature and consequences thereof, that any allegations as indicated in this form are true, and that there is a factual basis for the plea(s) and admission(s). The court accepts the accused's plea(s). The court orders that this form be filed and incorporated in the record of proceedings.

.....  
*Name and signature of Judge /Magistrate*

Date: .....

## PROCEDURE FOR PLEA BARGAIN IN COURT

1. Party called.
2. Representatives introduced.
3. State introduces the Plea Bargain Agreement.
4. Defence confirms the Plea Bargain Agreement.
5. Court informs accused of his or her rights in a criminal trial and the effect of a plea of guilty.
6. Court finds out from the accused whether he voluntarily signed the agreement after it had been explained to him or her and translated to him or her in a language he or she understands.
7. If the accused so confirms, he or she is invited to execute a confirmation.
8. If the agreement is accepted by court the same is received on court record.
9. The charge is read and explained to the accused in the language he or she understands.
10. If he or she confirms that he or she understands the charge he or she is invited to plead to it.
11. Plea is recorded.
12. If he or she pleads guilty, state summaries the facts.
13. If accepted to be true by the accused, he or she is found guilty and convicted on his or her own plea of guilty.
14. State is heard in aggravation.
15. Defence is heard in mitigation.
16. Convict is heard in *alloeustus*.
17. Victim or complainant's views on sentence are heard.
18. Convict is sentenced.

SCHEDULE 3

rule 12(5)

PLEA BARGAIN CONFIRMATION

THE REPUBLIC OF UGANDA

IN THE ..... COURT OF UGANDA AT .....

UGANDA

VERSUS

..... CASE NO. ....

I ..... before this Honourable court confirm that I freely and voluntarily sign the Plea Bargain Agreement.

.....  
ACCUSED PERSON

In the presence of :-

.....  
ACCUSED'S ADVOCATE

.....  
STATE ATTORNEY

Before

.....  
JUDGE/MAGISTRATE

Dated this ..... day of ..... 20.....

HON. BART M. KATUREEBE  
*Chief Justice .*