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# **PRACTICE DIRECTIONS ON PLEA BARGAINING**

**2024**

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COMPENDIUM OF PRACTICE DIRECTIONS &  
ADMINISTRATIVE GUIDELINES IN GHANA  
2024

## **ACKNOWLEDGEMENT**

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**Practice Directions for Determination of Applications for Interlocutory Injunctions to Restrain Burial of a Deceased Person**

- H/L Justice Francis Obiri (J)

**Administrative Guidelines on Procedures for Online Publication of Judgments and Rulings:**

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**Administrative Guidelines on using the Supreme Court Registry**

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**A DIRECTION to provide guidelines and uniform standards in the application of the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079)** which inserts Sections 162A through to 162R of the Criminal and Other Offences (Procedure) Act, 1960 as amended.

This Practice Direction shall be read together with the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079).

Being informed by the passage of the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079) which inserts Sections 162A through to 162R of the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079) introducing a structured regime for plea bargaining in Ghana;

And being aware of the limited oversight the Court has over Plea Bargaining Agreements under Act 1079 and also cognisant of the fact that the Attorney General may publish Guidelines to govern aspects of the plea bargaining process that do not involve or require supervision of the court;

I direct that, until subsidiary legislation or Rules of Court are passed ~~or~~, the negotiation and execution of plea bargaining agreements and consequential matters in all trial Courts shall be governed by the directions herein contained.

In this direction, reference to “accused” shall where the context so admits, refer to one or several accused persons.

**1. APPLICABILITY:**

Plea bargaining shall **not** be applicable to any or all of the following offences;

(a) treason or high treason;

(b) high crime;

- (c) rape;
- (d) defilement;
- (e) genocide;
- (f) robbery;
- (g) kidnapping;
- (h) murder
- (i) attempted murder ;
- (j) abduction ;
- (k) piracy ;
- (l) hijacking ; and
- (m) an offence related to public elections<sup>1</sup>

## **2. FORMS OF PLEA BARGAINING**

Under section 162(A) of Act 1079, plea bargaining in Ghana falls three headings:

1. Charge bargaining,
2. Sentence bargaining, and
3. Non-prosecution bargaining

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<sup>1</sup> Section 162R of Act 1079



**a. CHARGE BARGAINING**

Charge bargaining is the dismissal, substitution, or reduction of a charge to a lesser charge. The accused agrees to plead guilty to a lesser charge. The prosecution might agree that an accused pleads guilty to a lesser offence which carries a less severe punishment than the offence previously charged. An accused charged with multiple charges is allowed to plead guilty to fewer charges for a withdrawal of other charges. The prosecution may drop one or more charges in return for a guilty plea on the remaining charges. It is not necessary that the charges are identical. This only applies to an accused charged with several offences.

**b. SENTENCE BARGAINING**

Sentence bargaining relates to reduction of punishment. In exchange for an accused's guilty plea, the prosecution may agree to recommend that an accused receive a reduced or more lenient punishment.

**c. NON-PROSECUTION BARGAINING**

Non-prosecution bargaining relates the withdrawal of a charge against an accused in the interest of justice, national security or in the public interest. In this instance, charges are not filed at all or where charges have been filed, the charges may be withdrawn.

### 3. THE INITIATION OF A PLEA AGREEMENT:

#### A. AUTHORISATION FOR PLEA BARGAINING<sup>2</sup>

- a. The Attorney-General may, by notice in writing, authorise a prosecutor or a class of prosecutors to conduct plea bargaining, generally or in respect of a specified case.
- b. A prosecutor who is not an officer of the Office of the Attorney-General, is **not** mandated conclude a plea agreement without the consent of the Attorney-General.
- c. "An officer of the Office of the Attorney-General"<sup>3</sup> means

(i) a person holding the post of Deputy Attorney-General, Solicitor-General, Director, Legislative Drafting or Director, Public Prosecutions,

(ii) a person holding the post of Chief State Attorney, Principal State Attorney, Senior State Attorney, State Attorney or Assistant State Attorney,

(iii) any other person holding a post or, being of a rank declared by the Attorney-General by executive instrument to be equivalent to any of the posts or ranks specified in this subsection.

#### B. The plea negotiations may be initiated by

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<sup>2</sup>Section 162R of Act 1079

<sup>3</sup>Section 30(3) of the Law Officers Act, 1974 (N.R.C.D. 279).

- (a) an accused person or counsel for the accused person; or
- (b) a prosecutor in charge of the prosecution of an accused person.<sup>4</sup>

### **C. MODE OF NOTIFICATION OF THE COURT AND THE ROLE OF THE COURT IN PLEA BARGAINING**

- a) The prosecutor, the accused person or the counsel for the accused person shall give notice to the Court in writing of the commencement of the plea negotiations.
- b) Where the accused persons are jointly charged, plea agreements may be negotiated and entered into by either or all the accused persons depending on the circumstances of the case.
- c) The notice to the court must be provided by the prosecution or state attorney, the lawyer for the accused or the accused person where the accused person is unrepresented, within seven days of the decision to negotiate
- d) The Court may, upon notification of the commencement of plea negotiations, adjourn the case and give the prosecutor, and the accused person or the counsel for the accused person time to negotiate a plea agreement.
- e) Where a plea agreement is not reached within thirty days of the commencement of the plea negotiations the Court may proceed with the trial.
- f) The commencement or continuation of the trial shall not preclude the parties from further negotiations for the purposes of concluding a plea agreement.
- g) The Court shall **not** participate in a plea negotiation between a prosecutor and an accused person or lawyer for the accused person.

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<sup>4</sup> Section 162A of Act 1079

#### **D. DISCLOSURES**<sup>5</sup>

1. Prior to commencement of plea negotiations, the court shall ensure that the prosecution has fully disclosed to the accused, or counsel for the accused if represented, any document or material necessary for the accused to prepare a defence or negotiate fairly.
  
2. In general, the materials and documents to be disclosed shall include but not limited to;
  - a) the charge sheet or indictment;
  - b) the facts of the case of the prosecution;
  - c) a written or recorded statement made by the accused person to an investigator of the case;
  - d) a written recorded statement made by any other person in respect of the case;
  - e) a document in the possession of the prosecutor or investigator relevant to the case;
  - f) a photograph, audio, video or other electronic recording in the possession of the prosecutor or the investigator; and
  - g) exculpatory evidence in the possession of the prosecutor or the investigator of the case.

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<sup>5</sup> Section I62D of Act 1079; Republic v. Eugene Baffoe-Bonnie (SC) [2017-2020] 1 SCGLR 327; Practice Direction (Disclosure and Case Management in Criminal Proceedings), 2018; [2017-2020] 1 SCGLR 362.

3. The disclosures shall be made whether the prosecution intends to tender the documents and/or materials in evidence or not.
4. The accused or his lawyer shall be allowed time to inspect, and where possible, make a copy of the document or material.

**E. THE PLEA AGREEMENT**

1. All terms agreed to between the prosecution and the accused shall be in writing in the Plea Agreement and signed by both parties after the accused has been given the opportunity to review the plea agreement.
2. The plea agreement shall state:
  - a) That before the accused entered into the plea agreement, the accused was informed of his or her rights<sup>6</sup>;
  - b) The terms of the plea agreement;
  - c) The relevant facts of the case;
  - d) Any admission made by the accused;
  - e) All charges which the accused agreed to plead guilty to;
  - f) The sentence the prosecution agrees to recommend to the Court, if any; and
  - g) Any restitution or compensation the accused shall pay;
3. The plea agreement shall be signed by the prosecutor, the accused and/or his counsel, and shall be duly witnessed.

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<sup>6</sup>Section 162F (2) of Act 1079

#### **4. Jurat where necessary<sup>7</sup>**

In the case of a blind or illiterate accused person or a person under any other disability, there shall be due certification of a person other than the prosecutor, investigator or any other interested party that the Plea Agreement has been read over and explained to the accused person in a language that the accused person understands, and that the accused person appeared to understand the plea agreement before signing or thumbprinting the plea agreement.

#### **F: CONSIDERATION OF THE PLEA AGREEMENT BY THE COURT<sup>8</sup>**

1. Upon conclusion of the plea agreement, the prosecutor shall file a copy of the plea agreement in court within seven days and serve same on the accused person and the victim where applicable.
2. The Court may, where the circumstances so merit, allow for a plea agreement to be admitted out of time.
3. The prosecutor shall read the plea agreement (and where the circumstances so demand, the plea agreement shall be explained) in open court.
4. Before considering the plea agreement, the court shall address the accused person personally under oath to determine whether the accused person;
  - (a) entered into the plea agreement voluntarily;
  - (b) was informed of his or her rights under section 162C (2) of Act 1079;

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<sup>7</sup> Section 162F of Act 1079

<sup>8</sup> Section 162G of Act 1079

(c) understands the rights under section 162C (2) of Act 1079;

(d) that by accepting the plea agreement, the accused person is waiving the right to a full trial;

(e) the nature of the charge the accused person is pleading to.

5. The Court may inquire from a victim or complainant in a case whether the complainant or victim has any objection to the plea agreement and the Court shall take into consideration the views of the victim or complainant in considering the plea agreement.

#### **G: ACCEPTANCE OF THE PLEA AGREEMENT<sup>9</sup>**

1. The Court shall not accept a plea agreement unless the Court is satisfied that

(a) the accused person is of sound mind:

(b) the accused person entered into and signed the plea agreement voluntarily; and

(c) there is factual basis for the plea agreement.

2. Where the Court accepts a plea agreement, the Court shall call on the accused person to plead to a charge in the plea agreement.

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<sup>9</sup> Section 162H of Act 1079

3. Where the accused person pleads guilty to a charge, the Court shall record the plea and convict the accused person.
4. Where the accused person pleads not guilty,
  - (a) the Court shall treat the plea as a withdrawal from the plea agreement, and
  - (b) make an order for the trial of the accused person on the original charge.

**H: SENTENCING: Consideration of sentence**<sup>10</sup>

- (a) The Court is not bound by a plea agreement presented by the parties in respect of a particular charge.
- (b) Where the Court accepts a plea agreement and convicts an accused person, the Court shall consider the recommended sentence in the plea agreement.
- (c) Where the plea agreement does not include a recommended sentence, the Court may, subject to any enactment impose a sentence as the Court considers just.
- (d) In considering the sentence, the Court may invite the prosecutor and the accused person or counsel for the accused person to address the Court.
- (e) The Court shall also take into account

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<sup>10</sup> Section 162I of Act 1079



- i. the period the accused person has spent in detention in respect of the offence;<sup>11</sup>
- ii. the personal circumstances of the accused person;<sup>12</sup>
- iii. a written or oral statement made by the victim or the complainant or the representative of the victim or the complainant in respect of the plea agreement;
- iv. the stage of the proceedings at which the plea agreement was concluded; and
- v. any restitution or compensation contained in the plea agreement.

(f) Where the Court is satisfied that the sentence recommended is appropriate, the Court shall sentence the accused person in accordance with the plea agreement.

(g) Where the Court is dissatisfied with the sentence recommended in the plea agreement the Court may advise the parties to renegotiate the plea agreement.

## **I: REJECTION OF PLEA AGREEMENT**<sup>13</sup>

1. A Court may reject a plea agreement in accordance with law.

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<sup>11</sup> Owusu Banahene v. The Republic (SC) (Suit No. J2/02/2019 dated 3<sup>rd</sup> July, 2019)

<sup>12</sup> Article 14(4) of the 1992 Constitution; Owusu Banahene v. The Republic (SC) (Suit No. J2/02/2019 dated 3<sup>rd</sup> July, 2019); Frimpong @Iboman v. The Republic(SC) (Suit No. J3/5/2010 dated 18<sup>th</sup> January, 2010);Kingsley Amankwa@ Spider v. The Republic (SC) Crim. Appeal No. J3/04/2019 dated 21<sup>st</sup> July, 2021.

<sup>13</sup> Section 162J of Act 1079

2. Where a Court rejects a plea agreement, the Court shall

(a) record the reasons for the rejection of the plea agreement;

(b) inform the parties of the reasons for the rejection;

(c) enter a plea of not guilty on behalf of the accused person; and

(d) make an order for the trial of the accused person on the original charge.

(3) Where a plea agreement is rejected, the plea agreement and proceedings of the plea bargaining which gave rise to the plea agreement shall not be admissible in a subsequent trial arising from the same facts.

(4) The decision of the Court to reject a plea agreement shall not be subject to appeal.

(5) The rejection of a plea agreement shall not be a bar to subsequent negotiations for the purposes of entering into a new plea agreement.

#### **J: WITHDRAWAL FROM A PLEA AGREEMENT<sup>14</sup>**

1. A prosecutor or an accused person may at any stage of the proceedings withdraw from a plea agreement before the plea agreement is accepted by the Court.

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<sup>14</sup> Section 162K of Act 1079

## **K: PROCEEDINGS AFTER REJECTION OR WITHDRAWAL FROM A PLEA AGREEMENT**<sup>15</sup>

Where a party withdraws from a plea agreement, or where a plea agreement is rejected by the Court, the Court shall,

- (a) where the trial of the accused person had not commenced before the plea agreement, commence with the trial; or
- (b) where the trial of the accused person had commenced before the plea agreement, continue with the trial from where the Court ended before the plea agreement.

## **L: FINALITY OF JUDGMENT**<sup>16</sup>

1. Where a Court convicts and sentences an accused person in accordance with a plea agreement, the conviction and the sentence shall be final and an appeal shall not lie against the judgment of the Court.

## **M: SETTING ASIDE JUDGMENT**<sup>17</sup>

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<sup>15</sup> Section 162N of Act 1079

<sup>16</sup> Section 162L of Act 1079

<sup>17</sup> Section 162M of Act 1079

1. Despite section 162L of Act 1079 on the finality of Judgment, a prosecutor or an accused person may apply to the Court to set aside the judgment on the ground that the plea agreement entered into

(a) was as a result of

- (i) fraud;
- (ii) misrepresentation;
- (iii) undue influence;
- (iv) mistake;
- (v) duress;
- (vi) illegality; or
- (vii) incapacity

on the part of a person other than the person making the application; or

(b) is in breach of the rules of natural justice.

2. The application to set aside the Judgment shall be filed within ninety (90) days from the date of the judgment.

3. The application shall be

(a) by a motion supported by an affidavit, and

(b) served on the Attorney-General and a person affected by the application.

4. A person served with an application seeking to set aside the Judgment of the Court may file an affidavit in opposition to the motion.
  
5. The Court may
  - (a) allow a person who has filed an affidavit to be cross-examined on the affidavit of that person, and
  
  - (b) call a witness whose evidence is, in the opinion of the Court, relevant to the proceedings to testify before the Court.
  
6. Where the Court is satisfied that a plea agreement had been entered into as a result of fraud, misrepresentation, mistake, undue influence, illegality, incapacity, duress or in breach of the rules of natural justice, the Court
  - (a) shall set aside the judgment, and
  
  - (b) may make an order as to the re-trial or discharge of the accused person as the justice of the case demands.<sup>18</sup>
  
7. A person aggrieved by a decision of the Court, setting aside the Judgment or otherwise, may appeal against the decision.

## **N: PROTECTION OF PLEA AGREEMENT PROCESS<sup>19</sup>**

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<sup>18</sup> See *Watara v. The Republic* [1974] 2 GLR 24

<sup>19</sup> Section 162O of Act 1079

1. A statement made by an accused person during plea negotiations or in a plea agreement shall not be used for any purpose other than for the plea agreement. Thus, admissions or confessions made during plea negotiations or in a plea agreement cannot be used in evidence in the trial or for any other purpose.
2. A plea agreement may however be used in proceedings under section 162L regarding the finality of the Judgment handed down by the Court pursuant to a plea agreement.

#### **O: PLEA BARGAINING, DEATH PENALTY AND JUVENILE JUSTICE<sup>20</sup>**

1. Unless otherwise provided by any other enactment, the provisions of sections 162A to 162Q apply to a person tried under the Juvenile Justice Act, 2003 (Act 653), with the necessary modifications.
2. Subject to subsections (1) and (2) Act 1079 a person charged with an offence punishable by death shall not enter into a plea agreement to plead guilty to the offence punishable by death.
3. A person charged with an offence punishable by death may enter into a plea agreement to plead guilty to a lesser offence.

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<sup>20</sup> Section 162R(2),(3),(4),(5),(6) and (7) of Act 1079

4. In a proceeding before the Juvenile Court, a reference to an accused person shall be construed as a reference to the juvenile and the parent or guardian of the juvenile.
5. Where plea negotiations are initiated in a proceeding which involves a juvenile who is not represented by counsel, the Court shall refer the juvenile to the Legal Aid Commission and the Legal Aid Commission shall appoint a counsel to represent the juvenile in the proceeding.
6. A Juvenile Court shall not accept a plea agreement unless
  - (a) the Court has taken into consideration the social enquiry report under section 24 of the Juvenile Justice Act, 2003 (Act 653);
  - (b) the parent or guardian of the juvenile consents to and signs the plea agreement; and
  - (c) the plea agreement is in the best interest of the juvenile.

**P: FURTHER DIRECTIONS FOR JUEVENILE JUSTICE:**

1. Where juveniles are jointly charged, as in the case of any other accused persons, plea negotiations may be entered into with any or all of the juveniles depending on the circumstances of the case.

2. In the context of this direction reference to the juvenile may be construed as reference to the juvenile, his parent, and/or guardian.
3. In considering a plea agreement relating to a juvenile, the Court must consider the personal circumstances of the juvenile including mental state, medical conditions, age and vulnerability.
4. The Court shall also consider the social enquiry report on the juvenile.
5. The Court shall also consider the possibility of the juvenile being diverted from the criminal justice system in accordance with section 25 of the Juvenile Justice Act, 2003 (Act 653).
6. The Court shall consider section 33 of the Juvenile Justice Act, 2003 (Act 653) which provides for a time limit of six (6) months to complete trials involving juveniles.

#### COMMENCEMENT

This Practice Direction come into force on .....

**GETRUDE ARABA ESAABA SACKY TORKORNOO  
CHIEF JUSTICE OF THE REPUBLIC OF GHANA**