



# 10 FACTS ABOUT THE PLEA-BARGAINING LAW OF GHANA

Article 19 (2) (c) of the 1992 Constitution of Ghana provides that “a person charged with a criminal offence shall be presumed to be innocent until he is proved, or has pleaded guilty”. This means that an accused person has the liberty to plead guilty and waive his/her right to a full trial. Where the accused pleads guilty, he or she is convicted on his/her own plea and sentenced. However, there is an opportunity to plead guilty in exchange for some benefit, through the process of plea bargaining.

Through the efforts of the Attorney-General and with support of the US Government, Parliament has enacted the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079) to comprehensively provide for the processes of plea bargaining.

## 1. CONCEPTS OF PLEA BARGAINING, PLEA NEGOTIATIONS AND PLEA AGREEMENT

Plea Bargaining describes the process whereby an accused person pleads guilty in order to receive some benefit(s) such as a reduction in sentence, a reduction of an offence charged to a lesser offence, or a withdrawal of some charges. Because the plea bargaining involves a waiver of the accused’s right to a full trial, the first step of the process is Plea Negotiations between the accused and/or his/her counsel, on one hand; and the prosecution, on the other hand. Plea negotiations describe all the discussions, correspondence or other communication during the process. Plea negotiations also involve the participations of victims of crimes. **Plea negotiations can commence at any stage of the proceedings but before judgment.** Plea Agreement is an agreement that is reached after the plea negotiations have been completed.

## 2. PARTIES TO PLEA-BARGAINING

Plea Negotiations are between:

- a) The accused person and/or his/her counsel
- b) The Attorney General, acting through the prosecution

Any person charged with a criminal offence (with the exception of the exempted offences) may negotiate with the Attorney-General for a Plea Agreement, either directly or through his/her counsel. The Attorney-General may authorize a prosecutor to conduct plea bargaining.

Either party can initiate the process, at any time **before judgement** is pronounced.

The negotiations take into account the views of the victims of the crime committed. An agreement reached between the accused and the prosecution in disregard of the views of the victim will not be accepted by the court.

**Either Party can withdraw from the Plea Agreement before judgment.**

### 3. EXEMPTED OFFENCES UNDER THE LAW

Plea bargaining under Act 1079 is applicable to all criminal offences except:

- 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

### 4. BENEFITS TO THE STATE

Plea bargaining is one of the tools adopted in the criminal justice system to ensure speedy and efficient disposal of criminal matters. It is considered as one of the innovative ways of addressing the current challenges in the justice delivery system in Ghana- particularly delays in the adjudication of cases.

In cases where plea bargaining is utilised, it is likely that the trial process will either be shortened or avoided. This leads to a reduction in caseloads in the courts. The process also saves the state the costs of prosecution. Reduction in prosecutions and sentences also results in prison decongestion. Plea bargaining also contributes to the fight against organized crimes, where accused persons are co-opted in the trial as informants or prosecution witnesses.

### 5. BENEFITS TO THE ACCUSED PERSON

Plea bargaining gives the accused person access to benefits that do not exist in the traditional criminal trial. These include:

- a. Reduction in sentence;
- b. Withdrawal of some charges;
- c. Reduction in offences charged;
- d. Reduction in cost of litigation;
- e. Reformation of the accused;
- f. Reduction in recurrence of crime.

### 6. BENEFITS TO THE VICTIM

The plea bargaining focuses on the interest of the victim as part of doing justice to the parties. More specifically, it helps the victim to have:

- a. A voice in the criminal proceedings;
- b. his or her interests protected;
- c. possible compensation and restitution.

### 7. PLEA BARGAINING PROCESSES

- **Initiation of plea negotiations**

- ❖ Declaration of Intent: Either the accused or his/her counsel, or the prosecution informs the other party of the intention to engage in plea negotiations.

- ❖ Prosecution will seek the necessary approval from the Attorney-General.
  - ❖ Prosecution informs the accused person of his/her fair trial rights (right to be presumed innocent, right to not plead guilty, right to counsel, right to not testify or give self-incriminating evidence etc.)
  - ❖ Notification to the Court of the fact of commencement of plea negotiations
  - ❖ Adjournment of the case to allow for plea negotiation to take place.
  - ❖ The parties have 30 days to reach a plea agreement.
- **Conduct of plea negotiations**
    - ❖ Disclosures: Prosecution provides accused person or his/her counsel with all evidence in their possession in respect of the case against the accused, whether they intend to rely on them or not.
    - ❖ Consultation with interested parties/persons:
      - ✚ Consultation with the complainant and/or victim of the offence.
      - ✚ Parties will agree on negotiation and what to present to the complainant or victim, and ultimately to the Court for consideration.
- **Conclusion of Plea Agreement.**
    - ❖ Plea agreement will spell out the terms of the agreement; the relevant facts of the case; admissions made by the accused; the charges the accused person has agreed to plead to; the sentence to be recommended to the Court; any restitution or compensation to be made or paid.
    - ❖ The agreement is to be signed by the prosecutor, accused persons, and counsel for accused person (if any).
- **Consideration of Plea Agreement by Court**
    - ❖ The Court does not participate in the plea negotiations.
    - ❖ Where the plea agreement is concluded within the 30-days, the prosecutor is expected to file a copy in Court within 7 days of the date of the agreement.
    - ❖ The prosecutor is required to serve the accused person and the victim with copies of the signed agreement.
    - ❖ If the negotiations are not concluded within 30 days, the Court may proceed with the trial. However, this does not prevent the Parties from further negotiating for purposes of reaching an agreement.

## 8. CONSIDERATION OF PLEA AGREEMENT BY COURT

### Acceptance:

The Court will accept a plea agreement if the Court is satisfied that:

- a. the accused is of a sound mind,
- b. the accused entered into, and signed the plea agreement voluntarily, and
- c. there is factual basis for the plea agreement.

### Rejection:

If a Court rejects a plea agreement:

- a. The Court will record its reasons for the rejection,
- b. Inform the parties of the reasons for the rejection,
- c. Enter a plea of not guilty on behalf of the accused, and
- d. Make an order for the trial of the accused person.
- e. The decision of the Court to reject the plea agreement cannot be subject to appeal.
- f. The Court's rejection does not stop the parties from further negotiating.

9. **ACCUSED'S CRIMINAL RECORD AFTER A PLEA AGREEMENT**

An accused person shall upon entered into a plea agreement be convicted one his/her own plea, once the plea agreement is accepted by the Court. His /her criminal records shall reflect the fact of the conviction.

10. **PLEA BARGAINING AND PROTECTION OF RIGHTS.**

- a. The law protects the rights of the accused throughout the plea negotiation process.
- b. Also, the accused person can apply to the Court to set aside a plea agreement if the plea agreement was reached by reason of fraud, misrepresentation, undue influence, mistake, duress, illegality or incapacity.

*This message is from the LADA Institute, in support of the work of the Office of the Attorney-General, and with funding from the Bureau of International Narcotics and law Enforcement (INL) of the US Department of State.*