

**CRIMINAL AND OTHER OFFENCES (PROCEDURE)  
(AMENDMENT) BILL, 2021**

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**MEMORANDUM**

The purpose of the Bill is to amend the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) to provide for plea bargaining in the administration of criminal justice.

The Criminal and Other Offences (Procedure) Act, 1960 (Act 30), originally enacted as Criminal Procedure Code, came into force on the 12<sup>th</sup> of January, 1961. It has been in existence for almost six decades. National and international criminal justice systems have undergone several changes during this period the Act has been in force. As society changes and criminal jurisprudence evolve, there is the need to amend Act 30 to meet the needs of the society and to bring it in tune with international best practices. One of such evolving best practices is plea bargaining.

Plea bargaining is a process in the criminal justice system where an accused person relinquishes the right of the accused person to go to full trial in exchange for some other benefit. Such benefits may include a reduction of the offence charged to a lesser offence, reduction in punishment for an offence charged or a withdrawal of some of the charges against the accused person. While plea bargaining may result in the withdrawal of charges entirely, in exchange for a promise to assist in the prosecution of others, most plea bargains end in a conviction either for one or more of the offences charged, or for a lesser offence for which the accused could have been convicted of at trial.

The benefits of plea bargaining include a reduction in the caseloads of the courts and prosecutors, saving the State time and money by avoiding long and protracted trials, decongestion of the prisons due to reduced sentencing, aiding in the reform of accused persons, and the satisfaction of victims of offences through compensation and restitution in addition to the punishment of the accused. Due to the enormous benefits of plea bargaining, plea bargaining has been adopted as part of the criminal justice system in both civil law and common law jurisdictions.

Some form of plea bargaining already exists in our criminal justice system. Subsections (2) and (3) of section 239 of Act 30, for example, provide for some limited plea bargaining in respect of indictable offences while section 35 of the Courts Act, 1993 (Act 459) provides for plea

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bargaining in respect of offences which result in economic loss, harm or damage to the State or an agency of the State.

Recent enactments like the Office of the Special Prosecutor Act, 2017 (Act 959) and the Narcotics Control Commission Act, 2020 (Act 1019) also make provision for some form of plea bargaining in respect of corruption and corruption related offences and narcotic offences respectively.

The majority of offences under our criminal jurisprudence are however generally excluded from plea bargaining. The object of the Bill therefore is to amend the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), to specifically recognise plea bargaining to be applicable to all offences except the offences of treason and high treason. The exclusion of treason and high treason from plea bargaining is in consonance with clause (3) of article 140 of the 1992 Constitution which prevents the Court from convicting a person being tried for treason or high treason for any offence other than treason or high treason. The Bill also excludes from plea bargaining the offences of rape, defilement, genocide, robbery, kidnapping, attempted murder, abduction, piracy, hijacking and an offence related to public elections. In respect of all other cases, the discretion is given to the prosecutor, under the supervision of the Attorney-General to decide whether having regard to the circumstances of the case, it is just and fair to plea bargain. The Court is also given the power to supervise plea agreements by rejecting agreements that do not meet the ends of justice. In this way, prosecutors and judges are able to consider each case on its own merits.

The Bill comprises one *clause* which introduces sections 162A to 162Q which deal with plea bargaining. As the provisions are to be applicable to both summary offences and indictable offences, they are inserted under Part Two of the Act which deals generally with "Provisions relating to Criminal Proceedings."

Firstly, the *clause* deals generally with plea negotiations. Subject to section 162B, a person charged with a criminal offence may at any time

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before judgment, negotiate with the Attorney-General for a plea agreement to reduce an offence charged to a lesser offence or to withdraw a charge against an accused person. A plea agreement under the Bill may provide for a sentence or a range of sentences to be recommended to the Court, the payment by the accused person of compensation to a victim of the offence or the making of restitution by the accused person.

The Attorney-General, who under article 88 of the Constitution, is vested with the power to conduct all prosecutions, is empowered under the Bill to authorise a prosecutor or a class of prosecutors to conduct plea bargaining, generally or in respect of a specified matter. This is in order to prevent abuse of the plea bargaining process. Furthermore, a prosecutor who is not an officer of the Office of the Attorney-General is not to conclude a plea agreement without the consent of the Attorney-General. These administrative checks and balances are meant to safeguard against abuses.

Provision has been made in the Bill for the initiation of plea agreements and the time for concluding of plea agreements. As most accused persons are usually not represented by counsel, the provision also requires that the prosecutor explains the processes and the rights of the accused person to the accused person at the commencement of the plea negotiations.

To ensure that accused persons make an informed decision in plea bargaining, and in accordance with the decision of the Supreme Court in the case of the *Republic v Eugene Baffoe-Bonnie and Others (Unreported Reference No. J1/06/2018 dated 7<sup>th</sup> June 2018)*, the Bill requires prosecutors to make disclosures before plea agreements are concluded.

The Bill also makes provision for the protection of the interest of the victim and the community at large by placing an obligation on a prosecutor before the conclusion of a plea agreement to inform a victim or complainant of the offence or the representative of the victim or complainant of the plea agreement and afford the victim or complainant or the representative of the victim or complainant an opportunity to make representations to the prosecutor regarding the contents of the plea

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agreement. This serves as a further check on prosecutors from abusing their powers under the Bill.

Provision is also made in the Bill for the form of a plea agreement, the matters that should be contained in the agreement and the regulation of the procedure when the plea agreement is presented to the Court.

Furthermore, the procedure to be followed when the Court accepts a plea agreement and the procedure for sentencing after a plea of guilty by the accused is also addressed in the Bill. Since the sentence recommendation may be a key inducing factor for accused persons to accept plea agreements, where the Court is dissatisfied with the sentence recommended in the plea agreement the Court may advise the parties to renegotiate the sentence.

The procedure for the rejection of a plea agreement is dealt with in the Bill. Where the Court rejects a plea agreement, the Court is to record the reasons for the rejection of the plea agreement, inform the parties of the reasons for the rejection, enter a plea of not guilty on behalf of the accused person and make an order for the trial of the accused person. The decision of the Court to reject a plea agreement, according to the Bill, is not to be subjected to appeal or review. However, the rejection of a plea agreement is not a bar to subsequent negotiations for the purposes of entering into a new plea agreement.

Under the Bill, either party may withdraw from the agreement at any time before the agreement is accepted by the Court and the accused person may further withdraw even after the acceptance but before sentencing.

Since a judgment arising from a plea agreement constitutes a compromised judgment, the Bill restricts the right of appeal against such judgments. However, such judgments may be set aside on grounds of fraud, misrepresentation or breach of the rules of natural justice.

The procedure when a plea agreement is withdrawn or rejected by the Court is also provided for in the Bill. This provision seeks to clarify

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that the trial may continue from where the trial ended and if the trial has not started then the trial may commence.

To ensure the integrity of the process and ensure the parties negotiate frankly and fairly, the Bill prevents a prosecutor from using statements made by the accused in plea bargaining for any other purpose. However, the plea agreement may be used when applying to set aside the judgment or when trying the accused person for perjury if the accused person commits the offence of perjury in the process of plea bargaining.

The Rules of Court Committee is empowered under the Bill to make further Rules to regulate the procedure for plea bargaining in accordance with clause (2) of article 157 of the Constitution. The Attorney-General is also empowered under the Bill to issue Guidelines for the administration of plea bargaining especially for the guidance of prosecutors.

Finally, in accordance with clause (3) of article 140 of the 1992 Constitution, plea bargaining is inapplicable in the trial of treason and high treason. The Bill also excludes from plea bargaining the offences of rape, defilement, genocide, robbery, kidnapping, murder, attempted murder, abduction, piracy, hijacking and an offence related to public elections. The Bill however is applicable to a juvenile with the necessary modifications.

**GODFRED YEBOAH DAME**  
*Attorney-General and Minister for Justice*

Date: 26<sup>th</sup> November, 2021.

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**ARRANGEMENT OF SECTIONS**

*Section*

Sections 162A to 162Q inserted

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**BILL**

ENTITLED

**CRIMINAL AND OTHER OFFENCES (PROCEDURE)  
(AMENDMENT) ACT, 2021**

**AN ACT** to amend the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) to provide for plea bargaining in the administration of criminal justice and for related matters.

**PASSED** by Parliament and assented to by the President:

**Sections 162A to 162Q inserted**

1. The Criminal and Other Offences (Procedure) Act, 1960 (Act 30) is amended by the insertion after section 162 of

*“Plea Bargaining*

**Plea negotiations**

**162A.** (1) Subject to section 162B, a person charged with a criminal offence may at any time before judgment, negotiate with the Attorney-General for a plea agreement

(a) to reduce an offence charged to a lesser offence; or

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- (b) to withdraw a charge against an accused person.
- (2) A plea agreement under subsection (1) may provide for
  - (a) a sentence or a range of sentences to be recommended to the Court;
  - (b) the payment by the accused person of compensation to a victim of the offence; or
  - (c) the making of restitution by the accused person.
- (3) Where the accused person is represented by counsel, the plea negotiations shall be between the prosecutor and counsel for the accused person.

**Authorisation for plea bargaining**

**162B.** (1) 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 matter.

(2) A prosecutor who is not an officer of the Office of the Attorney-General, shall not conclude a plea agreement without the consent of the Attorney-General.

(3) For the purposes of subsection (2), “an officer of the Office of the Attorney-General” means a person holding a post or of a rank specified in subsection (3) of section 3 of the Law Officers Act, 1974 (N.R.C.D. 279).

**Initiation of plea negotiations**

**162C.** (1) The plea negotiations referred to in section 162A may be initiated by

- (a) an accused person or counsel for the accused person; or
  - (b) a prosecutor in charge of the prosecution of an accused person.
- (2) The prosecutor shall, at the commencement of the plea negotiations, inform the accused person of the right of the accused person

- (a) to be presumed innocent until
  - (i) proven guilty; or



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- (ii) the accused person has pleaded guilty;
- (b) to plead not guilty;
- (c) to full trial;
- (d) to remain silent and not to testify during the proceedings;
- (e) not to be compelled to give self-incriminating evidence;
- (f) to be represented by counsel of the choice of the accused person;
- (g) to be afforded facilities to examine, in person or by counsel, a witness called by the prosecution before the Court; and
- (h) to obtain the attendance and carry out the examination of a witness to testify on the same conditions as those applicable to a witness called by the prosecution.

(3) 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.

(4) The Court may, upon notification of the commencement of plea negotiations, adjourn the matter and give the prosecutor, and the accused person or the counsel for the accused person time to negotiate a plea agreement.

(5) Where a plea agreement is not reached within thirty days of the commencement of the plea negotiations, the Court may proceed with the trial.

(6) The commencement or continuation of the trial under subsection (5) shall not preclude the parties from further negotiations for the purposes of concluding a plea agreement.

(7) The Court shall not participate in a plea negotiation between a prosecutor and an accused person or counsel for the accused person.

**Disclosures in plea bargaining**

162D. (1) The prosecutor shall, on the commencement of plea negotiations, serve on the accused person or counsel for the accused

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person any document or material necessary for the accused person to prepare a defence or to negotiate fairly.

(2) Unless prohibited by any other enactment, the materials and documents referred to in subsection (1) include

- (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 or recorded statement made by any other person in respect of the case;
- (e) a document in the possession of the prosecutor or the investigator relevant to the case, whether the prosecutor intends to tender the document at the trial or not;
- (f) a photograph, audio, video or other electronic recording in the possession of the prosecutor or the investigator whether the prosecutor intends to tender the photograph, audio, video or electronic recording in evidence or not; and
- (g) exculpatory evidence in the possession of the prosecutor or the investigator of the case.

(3) Where the nature of a document or material is such that it cannot be conveniently delivered, the prosecutor shall afford the accused person or counsel for the accused person an opportunity to inspect and, where possible, make a copy of the document or material.

**Consultation with interested parties**

**162E.** (1) A prosecutor shall not conclude a plea agreement with an accused person or counsel for an accused person unless the prosecutor has

- (a) informed a victim or complainant of the offence or the representative of the victim or complainant of the plea agreement;

- (b) afforded the victim or complainant or the representative of the victim or complainant an opportunity to make representations to the prosecutor regarding the contents of the plea agreement; and
- (c) taken into consideration
  - (i) the nature and circumstances under which the offence was committed;
  - (ii) the views of the investigator;
  - (iii) the personal circumstances of the accused person;
  - (iv) the previous conviction of the accused person, if any;
  - (v) the interest of the community; and
  - (vi) the interest of justice.

(2) A victim or a complainant of a case who objects to the terms of the plea agreement may cause a statement to be filed as part of the plea agreement detailing the grounds of the objection.

(3) Despite subsection (1), the failure of the prosecutor to inform the victim or complainant or the representative of the victim or complainant about a plea agreement shall not invalidate the plea agreement if the prosecutor shows that, after reasonable attempts, the prosecutor was unable to reach the victim, complainant or the representative of the victim or complainant.

### **Form of plea agreement**

**162F.** (1) Where a prosecutor and an accused person or counsel for the accused person reach a plea agreement, the prosecutor shall reduce the plea agreement into writing.

- (2) A plea agreement under subsection (1) shall state
  - (a) that before the accused person entered into the plea agreement, the accused person was informed of the rights of the accused person mentioned under subsection (2) of section 162C;
  - (b) the terms of the plea agreement;
  - (c) the relevant facts of the case;
  - (d) any admission made by the accused person;

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- (e) all the charges to which the accused person has agreed to plead;
- (f) the sentence to be recommended to the Court, if any; and
- (g) any restitution to be made or compensation to be paid by the accused person.

(3) The prosecutor shall give the accused person or counsel for the accused person the opportunity to review the plea agreement.

- (4) A plea agreement shall be signed by the
- (a) prosecutor;
  - (b) accused person; and
  - (c) counsel for the accused person, if any.

(5) Where the accused person is blind or illiterate or a person with a disability, a person other than the prosecutor or the investigator, shall read over and explain to the accused person the contents of the plea agreement in a language the accused person understands, and the person shall certify on the plea agreement that the contents have been read over and explained to the accused person and that the accused person appeared to understand the plea agreement before executing the plea agreement.

**Consideration of plea agreement by the Court**

**162G.** (1) Where a plea agreement is concluded, the prosecutor shall, within seven days, cause a copy of the plea agreement to be filed in Court.

(2) Despite subsection (1), the Court may where the circumstances merit admit a plea agreement out of time.

(3) The Court shall, before considering the plea agreement, address the accused person personally under oath to determine whether the accused person

- (a) entered into the plea agreement voluntarily; and
- (b) was informed of the rights of the accused person as specified under subsection (2) of section 162C and whether the accused person understands

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- (i) the rights specified under subsection (2) of section 162C;
- (ii) that by accepting the plea agreement, the accused person is waiving the right to a full trial;
- (iii) the nature of the charge the accused person is pleading to; and
- (iv) that by accepting the plea agreement, the accused person is waiving the right to appeal.

(4) The prosecutor shall read the plea agreement to the Court.

(5) The Court may inquire from a victim or a complainant of the case whether the victim or complainant 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.

**Acceptance of a plea agreement**

**162H.** (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.

(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, the Court shall

- (a) treat the plea as a withdrawal from the plea agreement, and
- (b) make an order for the trial of the accused person.

**Consideration of sentence**

**162I.** (1) Where the Court accepts a plea agreement and convicts an accused person, the Court shall consider the recommended sentence in the plea agreement.

(2) 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.

(3) In considering the sentence, the Court may invite the prosecutor and the accused person or counsel for the accused person to address the Court.

(4) The Court shall also take into account

- (a) the period the accused person has spent in detention in respect of the offence;
- (b) the personal circumstances of the accused person;
- (c) 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;
- (d) the stage of the proceedings at which the plea agreement was concluded; and
- (e) any restitution or compensation contained in the plea agreement.

(5) Where the Court is satisfied that the sentence recommended is appropriate, the Court

- (a) shall sentence the accused person in accordance with the recommended sentence; and
- (b) may make an order as to restitution or compensation.

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

**Rejection of plea agreement**

**162J.** (1) Where the 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.

(2) 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.

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

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

**Withdrawal from a plea agreement**

**162K.** (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.

(2) An accused person may withdraw from a plea agreement after the plea agreement has been accepted by the Court but before sentencing, if the Court intends to impose a sentence higher than the sentence recommended in the plea agreement.

**Finality of judgment**

**162L.** (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.

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- (2) Despite subsection (1), a prosecutor or an accused person may apply to the Court to set aside the judgment on the ground that the plea agreement was entered into
- (a) as a result of fraud or misrepresentation on the part of a person other than the person making the application; or
  - (b) is in breach of the rules of natural justice.
- (3) An application under subsection (2) shall be filed within ninety days from the date of the judgment.
- (4) 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.
- (5) A person served with an application under subsection (4) may file an affidavit in opposition to the motion.
- (6) 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.
- (7) Where the Court is satisfied that a plea agreement had been entered into as a result of fraud or misrepresentation 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.
- (8) A person aggrieved by a decision of the Court under this section may appeal against the decision.

**Proceedings after rejection or withdrawal from a plea agreement**

**162M.** 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.

**Protection of plea agreement process**

**162N.** (1) Despite a provision in this Act or any other enactment, 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.

- (2) Despite subsection (1), a plea agreement may be used
  - (a) in proceedings under section 162L; or
  - (b) for the trial of the accused person for the offence of perjury arising from the plea negotiations and the plea agreement.

**Rules**

**162O.** The Rules of Court Committee may, in accordance with clause (2) of article 157 of the Constitution, make Rules to regulate the procedure for plea bargaining.

**Guidelines**

**162P.** The Attorney-General may issue Guidelines for the administration of plea bargaining.

**Application of sections 162A to 162P**

**162Q.** (1) Unless otherwise provided by any other enactment, the provisions of sections 162A to 162P apply to the trial of a person charged with a criminal offence under any enactment except a person charged with

- (a) treason or high treason;
- (b) rape;
- (c) defilement;
- (d) genocide;
- (e) robbery;
- (f) kidnapping;
- (g) murder;

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- (h) attempted murder;
- (i) abduction;
- (j) piracy;
- (k) hijacking; and
- (l) an offence related to public elections.

(2) Unless otherwise provided by any other enactment, the provisions of sections 162A to 162P apply to a person tried under the Juvenile Justice Act, 2003 (Act 653), with the necessary modifications.

(3) Subject to subsections (1) and (2), 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.

(4) Despite subsection (3), a person charged with an offence punishable by death may enter into a plea agreement to plead guilty to a lesser offence.

(5) 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.

(6) 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.

(7) 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.”.

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Date of *Gazette* notification: 29<sup>th</sup> November, 2021.